Corrected 11-17-83 J.A. p 1120 - 1725 (Testimony + Jury Instructions)

Nos. 82-2159, 82-2160, 82-2221, 82-2226, 82-2227

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

1566- Preston
1570- Bynum
1597- Barry
1598- D. Moore
1614- Bloom
1636- Jury instructions

JULIUS HOBSON, et al.,

Plaintiffs-Appellees, Cross-Appellants,

v.

JERRY V. WILSON, et al.,

Defendants-Appellants, Cross-Appellees.

1122- Jones
1158- Brennan
1218- Suter
1256- Acree
1263A- Herlihy
1272- Winkleman
1299- Wilson
1350- Drummond
1362A- Zelloe
1364- Harding
1368- Mahaney
1371- Scrapper
1403- Mostrom
1411- Pangburn
1433- Jones
1475- Moore
1498- Brennan
1537- Jasen
1549- Markovich
1562- Tague

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX
VOLUME III

MORTON STAVIS
RANDOLPH SCOTT-McLAUGHLIN
Center for Constitutional Rights
853 Broadway
New York, New York 10279

ANNE PILSBURY
Post Office Box 362
New York, New York 10009

MARY BORESZ PIKE
Somerstein & Pike
233 Broadway, Suite 670
New York, New York 10279
Attorneys for Plaintiffs

RICHARD B. NETTLER
District Building
14th & E Streets, N.W.
Attorney for D.C. Defendants

J. PAUL McGRATH
Assistant Attorney General

STANLEY S. HARRIS
United States Attorney

BARBARA L. HERWIG
DAVID H. WHITE
MARC JOHNSTON
Attorneys, Civil Division
Department of Justice
Washington, D.C. 20530
Attorneys for FBI Defendants

A. RAYMOND RANDOLPH
Randolph & Fox
4801 Massachusetts Ave., N.W.
Washington, D.C. 20016
Attorney for Defendant Jones

Starts w/ R. 267 - R 274
+ R. 262 (12/16)

TABLE OF CONTENTS

VOLUME I

	PAGE
District Court Docket Entries	1
District Court Supplemental Docket Entries	68
Complaint (Damages and Injunctive Relief), filed July 16, 1976	76
Answer Of Defendants Chief John B. Layton, Inspector Robert Zink, Inspector Albert W. Ferguson, Inspector George R. Suter, Sgt. Christopher Scrapper, Sgt. Dixie Gildon, Officer John Mahaney, Officer Ann Markovich And The District Of Columbia To The Complaint, filed September 17, 1976	89
Plaintiff Sammie A. Abbott's Response To First Set Of Interrogatories By Defendants Kelley, Stames, Kunkel, McDermott, O'Connor, Sawyer, Yates, Feuer And Rarrity, filed October 8, 1976	99
Answer Of Defendants Clarence M. Kelley, William C. Sullivan, Nick Stames, Robert G. Kunkel, John J. McDermott, Terry O'Connor, Charles M. Sawyer, Robert E. Yates, Robert W. Feuer, And David Rarity, filed December 6, 1976	107
Notice Of Filing Of Claim Of Privilege And Submission Of In Camera Exhibits, with Affidavit And Claim Of Privilege of Griffin B. Bell, filed September 22, 1977	122
Amended Complaint (Damages and Injunctive Relief), filed October 28, 1977	130
Memorandum Of Points And Authorities In Support Of The Claim Of Informant Privilege, filed December 15, 1977	146
Notice Of Filing Claim Of Privilege By The Secretary Of The Army And Submission Of In Camera Exhibit, with Affidavit And Claim Of Privilege of Clifford L. Alexander, Jr., filed February 17, 1978	150
Notice Of Filing Claim Of Privilege By The Director Of Central Intelligence And Submission Of In Camera Exhibit, with Affidavit of John F. Peyton, Jr. and attachment, filed March 15, 1978	156

Plaintiff Washington Peace Center's Supplemental Response To Federal Defendants' Third Set Of Interrogatories, with attachments, filed April 28, 1978: ---------- 172

Plaintiff Washington Peace Center's Supplemental Response To Federal Defendant's Second Request For Production Of Documents ---------- 176

Washington Peace Center Newsletter, October-November 1975 ---------- 177

Order and Memorandum Opinion, filed August 31, 1978, re: upholding claims of privilege of the Attorney General, the Secretary of the Army and the Director of the CIA ------- 183

Notice Of Filing Of Claim Of Privilege And Submission Of In Camera Exhibit G, with Affidavit And Claim Of Privilege of Griffin B. Bell, filed November 7, 1978 ---------- 189

Memorandum Order, filed December 13, 1978, re: upholding claim of privilege asserted by Webster and supported by Bell affidavit ---------- 193

Motion By Defendants Burgess, Courtney, Glass, Grimaldi, Gulotta, Jones, Keller, Krebs, Lamberth, Moore, Olmert, Palmer, Pangburn, Rudiger, Schlarman, Stanley, And Waite To Dismiss, with Declarations of Courtland J. Jones and Wilfred R. Schlarman, filed April 2, 1979 ---------- 196

Order, filed November 9, 1979, re: denying plaintiffs' motion for an order to disqualify ---------- 200

Order and Memorandum Opinion, filed November 9, 1979, re: denying plaintiffs' motion for reconsideration of orders upholding federal defendants' claim of informant privilege and denying plaintiffs' motion for indexing ---------- 201

Order, filed November 14, 1980, re: granting defendant Stames' motion for judgment on pleadings and granting defendant McDermott's motion for summary judgment ------- 212

Letter from David H. White to Honorable Louis F. Oberdorfer, filed December 8, 1980 ---------- 213

Plaintiffs' Response To Order Of December 5, 1980, filed December 15, 1980 ---------- 216

Plaintiff's Third Request For Production Of Documents, To Defendant District Of Columbia, filed January 23, 1981 -- 217

Plaintiffs' Eighth Set Of Interrogatories, To Defendant District Of Columbia, filed January 23, 1981 ---------- 219

Plaintiff Sammie Abbott's Response To Interrogatories To Plaintiffs By Federal Defendants, filed May 1, 1981 ----- 223

Plaintiff Abe Bloom's Response To Interrogatories To Plaintiffs By Federal Defendants, filed May 1, 1981 ----- 233

Plaintiff Arthur I. Waskow's Response to Interrogatories To Plaintiffs By Federal Defendants, filed May 1, 1981 ----- 245

Plaintiff Reginald Booker's Response To Interrogatories To Plaintiffs By Federal Defendants, filed May 4, 1981 ----- 257

Motion By Defendant Courtland J. Jones To Dismiss, with Exhibits A - C, filed August 20, 1981 ---------- 265

Motion By Defendant Gerould Pangburn For Judgment On The Pleadings, filed September 16, 1981 ---------- 291

Motion By Federal Defendants For Judgment On The Pleadings, with Exhibits, filed September 16, 1981 ---------- 292

Reply Memorandum In Support Of Motion By Federal Defendants For Judgment On The Pleadings And Motion By Defendant Gerould Pangburn For Judgment On The Pleadings, filed October 15, 1981 ---------- 321

Memorandum And Order, filed October 29, 1981, re: denying defendants Jones and Pangburn's motion to dismiss, with exceptions ---------- 327

Memorandum By Federal Defendants In Opposition To Plaintiffs' "Motion For Reconsideration" And In Response To The Court's Order Of October 29, 1981, with Exhibits A and B, filed November 12, 1981 ---------- 333

Response Of The District Of Columbia Defendants To Plaintiffs' Memorandum Regarding Fraudulent Concealment, filed November 12, 1981 ---------- 346

Memorandum By Federal Defendants On Their Defenses, filed November 19, 1981 ---------- 353

Final Pretrial Order, filed November 23, 1981 ---------- 362

Judgment On The Verdict (For Defendant), filed December 23, 1981, re: defendants Acree, Bynum, Mahaney, Kolego, Markovich, Suter, Jagen, and Scrapper ---------- 367

Judgment On The Verdict (For Defendant), filed December 23, 1981, re: defendants Wilson, Herlihy, Acree, Scrapper, Jagen, Suter, Bynum, Mahaney, Markovich, Brennan, Moore, Pangburn, Grimaldi, Jones and District of Columbia ------ 368

Judgment On The Verdict (For Plaintiffs), filed December 23, 1981, re: plaintiffs Booker, Hobson and Eaton ---------- 369

Special Verdict Forms, filed December 23, 1981 ---------- 371

Judgment On The Verdict (For Plaintiffs), filed December 23, 1981, re: plaintiffs Abbott, Bloom, Pollock, Washington Peace Center and Waskow ---------- 407

Motion Of District Of Columbia Defendants For Judgment Notwithstanding The Verdict Or, In The Alternative, For New Trial Or, In The Alternative For A Remittitur, filed December 31, 1981 ---------- 410

Motion By Defendants Brennan, Moore, Jones, Pangburn, And Grimaldi For Judgment Notwithstanding The Verdict Or, In The Alternative, For New Trial, filed January 4, 1982 --- 414

Reply Of The District Of Columbia Defendants To Plaintiffs' Opposition To The Motion Of The District Of Columbia Defendants Judgment Notwithstanding The Verdict, Or In The Alternative For A New Trial Or In The Alternative, For A Remittitur, filed February 19, 1982 ---------- 415

The District Of Columbia Defendants' Statement On Damages In Response To This Court's Order Of April 14, 1982, filed April 29, 1982 ---------- 427

Reply Of D.C. Defendants To Plaintiffs' Statement Of The Evidence Relating To Harm, filed May 4, 1982 ---------- 435

Letter from Anne Pilsbury to Hon. Louis F. Oberdorfer, dated May 12, 1982 ---------- 439

Memorandum and accompanying Order, filed June 1, 1982, re: granting motions of defendants Wilson and Herlihy for judgments notwithstanding the verdicts assessing punitive damages against them and denying all other motions ------ 440

Order, filed June 1, 1982, re: denying federal defendants motion for judgment notwithstanding the verdict or for new trial; granting D.C. defendants motion for judgment notwithstanding the verdict assessing punitive damages; and denying D.C. defendants motion for judgment notwithstanding the verdict or for new trial ---------- 504

Order, filed June 1, 1982, re: setting schedule for addressing injunction prohibiting reinstatement of certain discontinued FBI and MPD activities is moot, whether FBI files should be released to plaintiffs and all copies destroyed, and whether FBI has any files regarding plaintiffs that there were subject to prior FOIA release ----- 505

Memorandum By Defendant William H. Webster In Response To Court's Order Of May 31, 1982, Regarding Prayer For Equitable Relief, with attachments, filed June 15, 1982: - 506

Order and Memorandum in American Friends Service Committee v. William B. Webster , No. 79-1655 (D. D.C.) ---------- 510

Reply Of D.C. Defendants To Plaintiffs' Memorandum On Need For Injunctive Relief, filed June 22, 1982 ---------- 531

Motion By Plaintiffs For Hearing On Issue Of Current FBI Practices As They Relate To Need For Injunctive Relief, with Memorandum in support and attachment, filed June 25, 1982 ---------- 539

Correction To Attachment Submitted With Plaintiffs' Motion For Hearing On Issue Of Current F.B.I. Practices, with attachment, filed June 28, 1982 ---------- 543

Plaintiffs' Memorandum On Need For Injunctive Relief To Prohibit Future Misconduct By The FBI Or District Of Columbia, filed July 9, 1982 ---------- 545

Memorandum and accompanying Order, filed July 22, 1982, re: denying plaintiffs' prayer for injunctive relief; that judgment be entered for defendant Webster and all other defendants named in amended complaint against whom the jury returned no verdict; and that Clerk enter judgment without awaiting decision on plaintiffs' pending application for attorneys' fees ---------- 556

Order, filed August 28, 1982, re: denying defendants' second motion for judgment notwithstanding verdict; and denying motion for stay of execution as moot ---------- 557

VOLUME II

Excerpts from Depositions of:

David H. Eaton, October 18, 1978 ---------- 558
Richard P. Pollock, October 18, 1978 ---------- 570
Reginald H. Booker, November 6, 1978 ---------- 576
Tina Hobson, November 7, 1978 ---------- 587
Arthur Waskow, November 7, 1978 ---------- 596
Sammie Abdullah Abbott, December 13, 1978 ---------- 605
Abraham Bloom, January 12, 1979 ---------- 614

Excerpts from Pretrial and Trial Transcripts:

Volume I, November 16, 1981 ---------- 625

Volume II, November 24, 1981 ---------- 627
Volume II, November 25, 1981 ---------- 719

Volume III, November 30, 1981 ---------- 786
Volume III, December 1, 1981 ---------- 956
Volume III, December 2, 1981 ---------- 959
Volume III, December 3, 1981 ---------- 1038

VOLUME III

Volume III, December 4, 1981 ---------- 1120

P.M. Testimony, December 4, 1981 ---------- 1172

Volume III, December 7, 1981 ---------- 1216

Volume IV, December 8, 1981 ---------- 1296
Volume IV, December 9, 1981 ---------- 1379
Volume IV, December 10, 1981 ---------- 1402

Volume V, December 11, 1981 ---------- 1533
Volume V, December 14, 1981 ---------- 1594
Volume V, December 15, 1981 ---------- 1616

A.M. Testimony, December 16, 1981 ---------- 1621

Volume V, December 17, 1981 ---------- 1632
Volume V, December 18, 1981 ---------- 1703
Volume V, December 23, 1981 ---------- 1721

VOLUME IV

Excerpts from Plaintiffs' Exhibits:

Exh. 1 ---------- 1726
Exh. 2a and 2b ---------- 1729
Exh. 3 ---------- 1742
Exh. 4 [1 of 2] ---------- 1747
Exh. 4 [2 of 2] ---------- 1759
Exh. 5 ---------- 1794
Exh. 6 ---------- 1796
Exh. 7 ---------- 1798
Exh. 8 ---------- 1802
Exh. 9 ---------- 1806
Exh. 10 ---------- 1810
Exh. 11 ---------- 1813
Exh. 12 ---------- 1816
Exh. 13 ---------- 1818
Exh. 14 ---------- 1821
Exh. 15 ---------- 1823
Exh. 16 ---------- 1825
Exh. 17 ---------- 1827
Exh. 18 ---------- 1828
Exh. 19 ---------- 1830
Exh. 20-1 through 20-4 ---------- 1833
Exh. 21-1 through 21-8 ---------- 1837
Exh. 22 ---------- 1845
Exh. 23 ---------- 1846
Exh. 24 ---------- 1848
Exh. 25 ---------- 1849
Exh. 26 ---------- 1850
Exh. 27 ---------- 1853
Exh. 28 ---------- 1859
Exh. 29 ---------- 1860

Exh. 30 ---------- 1861
Exh. 31 ---------- 1863
Exh. 31A ---------- 1865
Exh. 36 ---------- 1867
Exh. 45 ---------- 1869
Exh. 46 ---------- 1876
Exh. 47 ---------- 1880
Exh. 48 ---------- 1882
Exh. 49 ---------- 1885
Exh. 50 ---------- 1892
Exh. 51 ---------- 1894
Exh. 52 ---------- 1897
Exh. 53 ---------- 1901
Exh. 54 ---------- 1902
Exh. 55 ---------- 1910
Exh. 56 ---------- 1916
Exh. 57 ---------- 1918
Exh. 58 ---------- 1919
Exh. 59 ---------- 1924
Exh. 60 ---------- 1925
Exh. 61 ---------- 1928
Exh. 62 ---------- 1930
Exh. 63 ---------- 1933
Exh. 64 ---------- 1934
Exh. 65 ---------- 1936
Exh. 66 ---------- 1939
Exh. 67 ---------- 1941
Exh. 68 ---------- 1944
Exh. 69 ---------- 1946
Exh. 70 ---------- 1949
Exh. 71 ---------- 1952
Exh. 72, with Attachments E, F, G ---------- 1956
Exh. 80 ---------- 2027
Exh. 83 ---------- 2036
Exh. 95-4 and 95-13 ---------- 2042
Exh. 96-1 and 96-63 ---------- 2044
Exh. 97-27, 97-96, and 97-103 ---------- 2049
Exh. 98 and 98-1 ---------- 2056
Exh. 99-7 and 99-10 ---------- 2064
Exh. 100-1, 100-2, 100-10, and 100-19 ---------- 2066
Exh. 101-5 through 101-8 ---------- 2072
Exh. 103-6 and 103-10 ---------- 2078
Exh. 105-1 and 105-2 ---------- 2081

Excerpts from D.C. Defendants' Exhibits:

Exh. 1 ---------- 2084
Exh. 2 ---------- 2088
Exh. 3 ---------- 2093
Exh. 4 ---------- 2108

Excerpts from Federal Defendants' Exhibits:

Exh. 1 ---------- 2137
Exh. 2 ---------- 2145
Exh. 3 ---------- 2149

Exh. 5 ---------- 2152
Exh. 6 ---------- 2155
Exh. 7 ---------- 2158
Exh. 8 ---------- 2164
Exh. 9 ---------- 2165
Exh. 10 ---------- 2174
Exh. 11 ---------- 2178
Exh. 18 ---------- 2179
Exh. 19 ---------- 2190
Exh. 20 ---------- 2202
Exh. 22 ---------- 2204

R.267

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., :

Plaintiffs, :

v. : CA No. 76-1326

JERRY WILSON, et al., :

Defendants. : Vol. 3

Washington, D. C.

December 4, 1981

The above-entitled matter came on for trial before the HONORABLE LOUIS F. OBERDORFER, United States District Court Judge, in Courtroom No. 3.

APPEARANCES:

On Behalf of the Plaintiffs:

DANIEL M. SCHEMBER, ESQ.
J. E. McNEIL, ESQ.
ANNE PILSBURY, ESQ.

On Behalf of the Federal Defendants:

DAVID WHITE, ESQ.
DENNIS HOFFMAN, ESQ.

On Behalf of the District of Columbia Defendants:

LAURA BONN, ESQ.
GEORGE BARCLAY, ESQ.

Official Reporter: Bruce W. Herzfeld

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Courtland Jones (recalled)			802	
(By Mr. White)		773		
Charles Brennan	803			

EXHIBITS

(None)

P R O C E E D I N G S

(9:30 a.m.)

(Jury not present.)

THE CLERK: The case of Hobson versus Wilson.

THE COURT: Any preliminary matters?

MS. BONN: I have a preliminary matter. Although I understand we are in the middle of a cross-examination, and this would not affect this witness, so perhaps I should reserve that.

THE COURT: Very well. We'll take it up after we finish with this gentleman.

MS. BONN: I'll bring that up after this.

THE COURT: Anything else before the jury comes back?

Bring in the jury, please.

(Before the jury.)

THE COURT: Good morning, ladies and gentlemen.

THE JURY: Good morning.

MR. WHITE: Your Honor, we would like to have Mr. Courtland Jones resume the stand.

THE COURT: Yes.

Whereupon,

COURTLAND JONES

having previously been duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. WHITE:

Q. Mr. Jones, you've been testifying for quite a long period of time, now. I want to go briefly over some of what you testified about earlier.

Would you tell the jury, please, when you first were employed by the Federal Bureau of Investigation?

A. 1940.

Q. And at what point did you become assigned to the Washington Field Office?

A. 1945.

Q. And how long did you remain at the Washington Field Office?

A. Until 1974 when I retired.

Q. Have you had any official connection with the FBI since the date of your retirement?

A. No, sir.

Q. What was your principal assignment during the period 1964 until 1974?

A. I was the Security Coordinating Supervisor.

Q. You testified earlier regarding two of the squads that were under your jurisdiction, S-7 having to do with the New Left, and S-5, having to do with extremist matters. And I think you also mentioned a squad that dealt with electronic surveillance. What was the general function,

without disclosing any classified or national security information, what was the general function of the other six squads under your jurisdiction?

A. The other six squads concerned investigations of Soviet bloc countries and other foreign nationalities.

Q. To the best of your recollection, sir, how many agents were assigned to the nine squads?

A. It would vary, but roughly 200.

Q. And what, generally, if you can generalize, was the nature of the work that each of those agents was responsible for carrying out?

A. Well, they did investigative work, primarily, and they were divided roughly among the nine squads with eight other supervisors working under me.

Q. Was there one squad of those nine that you had particular responsibility for?

A. Yes, sir.

Q. And what was the general area of responsibility of that one squad?

A. That squad handled special matters, primarily in the Soviet bloc counterespionage field.

Q. Were you normally informed of particular investigations handled by each of the 200 agents?

A. No, sir.

Q. What kind of particular investigations, if any,

would come to your attention?

A. Well, those of importance or where there were problems or some major decision.

Q. And would that sort of general characterization apply both to the foreign counterintelligence kind of investigations as well as to domestic intelligence?

A. Very much so, yes, sir.

Q. Mr. Jones, you testified at some length regarding a couple of programs of concern to this litigation. Were you aware in 1968 or thereabouts of the existence of the program Counterintelligence Program- New Left?

A. Oh, yes, sir.

Q. And were you aware of the Counterintelligence Program-Black Nationalist Hate Groups?

A. Yes, sir.

Q. What generally was your responsibility, if any, with regard to those two programs?

A. To handle any problems or see that they ran smoothly. My job was primarily an administrative job with respect to the other eight squads; to basically take care of any problems or to handle personnel, or else make decisions in major investigative efforts.

Q. Who created those two programs?

A. They were created at the Headquarters level.

Q. Did you have any personal role in the creation

or formulation of any of those ideas?

A. No, sir. I was not consulted at all.

Q. Mr. Jones, I've placed before you a number of exhibits about which you testified earlier, and I'd like to go through briefly some of those. If you would find first, please, sir, Exhibit No. 16. Do you have that before you?

A. Yes.

Q. Would you describe briefly for the benefit of the jury, please, the nature of that document.

A. This is a memorandum to the special agent in charge of the Field Office from special agent Wilfred R. Schlarman, and the caption is DEMPIC. It's dated January 21, 1969, and it says in summary that someone using the frequency of the National Mobilization Committee interfered with their transmissions.

Q. On what occasion, sir?

A. On the occasion of January 20, 1969.

Q. And what is the significance of that date?

A. That was the date of a demonstration.

Q. What does the term DEMPIC mean, do you recall?

A. I'm not certain. I don't really recall.

Q. Do you recall, sir, your own assignment on the day of January 20, 1969?

A. No, sir.

Q. If I might refresh your recollection, January 20, 1969, the testimony has shown earlier, was the date of the inauguration of the President. Do you have any recollection as to what your assignment might have been on that date or what you might have been doing?

A. I would assume that I was on the street assisting in the coordination of the coverage that the FBI had of the demonstration.

Q. Did that --

A. I was probably also in the office some, too, but primarily on the street.

Q. Were you aware at that time while you were either on the street or in the office -- for the benefit of the jury, please, Mr. Jones, describe where the office is in connection with the inauguration ceremonies or was at that time.

A. Yes. The office was at 12th and Pennsylvania Avenue, the old Post Office Building.

Q. And, Mr. Jones, do you recall or were you aware at that time while you were on the street or perhaps in the office of this incident of someone interfering with the radio communications of the National Mobilization Committee?

A. I don't believe so. I have no recollection of it at all.

Q. Now, Mr. Jones, in your capacity as a security coordinator, what was your normal practice when you read a document? Did you have a normal practice with regard to the document, the way you handled the document?

A. Generally, if I read a document, I put my initials on it.

Q. Now, looking again at Plaintiffs Exhibit 16, do you have any recollection of having seen this document at the time it was prepared on January 21, 1969?

A. No, sir.

Q. And is there anything that appears on the document to indicate that you, in fact, read it or saw it?

A. No, sir.

Q. There is a stamp on the lower right-hand corner --

A. Yes.

Q. -- and what is that stamp called?

A. That's called a blaock stamp, and it's for serializing and it's for the purpose of someone having to put his initials there so it can be filed.

Q. What does serializing mean?

A. Each document receives a file -- each case has a file number, and each piece of paper that is put in it has a serial number starting from 1, 2, 3, and so forth.

Q. Is there an initial on the block stamp of this document?

A. Yes, sir.

Q. Can you identify it?

A. It looks as if it is an S, and if it is an S, it is probably that of special agent Schlarman, who prepared this memorandum.

Q. Now, sir, I'd like you to look at -- well, before we conclude with 16, it's addressed from special agent Wilfred R. Schlarman to the SAC-WFO. What is the significance of the "To" line, that is, the address to SAC-WFO?

A. This is primarily for file. Mr. Schlarman prepared this memorandum to go into the file of DEMPIC. Every document, every internal document prepared in the field office is addressed to the SAC.

Q. Does that mean that the SAC actually receives --

A. Oh, no, sir, not at all.

Q. Now, sir, looking at Plaintiffs' Exhibit 20, would you explain for the jury briefly, please, the nature of your recollection as to Exhibit No. 20, to refresh their recollection.

A. This is an AIRTEL from the Field Office to the Director of the FBI, and it's entitled COINTELPRO - Black Nationalist - Hate Groups, Racial Matters, and then underneath that is written the Black United Front. It is dated September 24, 1969 and it indicates that at a meeting of the Washington Mobilization Committee to End the War in

Vietnam, that it was announced that someone from the Committee had contacted Julius Hobson and asked him to speak at the rally on November 15, 1969.

Q. Mr. Jones, do your initials appear on this document? If you look, sir, at the front, you might find --

A. Yes, sir.

Q. And what is the significance of your initials on the document?

A. I signed it out. I see -- I approved it for the Washington Field Office, and from my desk it went to the Bureau.

Q. The Bureau being Bureau Headquarters, is that correct?

A. Yes, sir, Headquarters.

Q. Mr. Jones, during the course of a day or during the course of your work as Security Coordinator, did you have occasion frequently to sign out documents for purposes of transmission to Bureau Headquarters?

A. Yes, sir.

Q. Would you have any way of estimating how many documents you might see in any given day for that purpose?

A. A lot of them. I -- it would vary. I suppose 100 or so or even more. That would be hard to estimate.

Q. Would it be at all possible to estimate the amount of time you were able to devote to this particular document?

A. Not very much.

Q. Not very much time?

A. No, I didn't have that much time. I would read it quickly.

Q. To the best of your recollection, did you have occasion to talk to the author of this document prior to its transmission regarding this document?

A. Oh, I doubt that very, very much.

Q. Can you tell from the face of the document who, in fact, is responsible for the writing of the document and the ideas contained in it?

A. Oh, yes. This was prepared by H. E. G., and that was Harry Ervin.

Q. Do you recall which squad he was on at that time?

A. He was on S-5, and that would be the Racial Squad.

Q. Mr. Jones, I'd like you now to look at Exhibit No. 21. That would be the next document, Exhibit 21. I think you have 20 in your hand.

A. Oh, yes.

Q. If I can just be sure that mine conforms to yours.

A. 21-1.

Q. Okay.

Now, sir, would you describe briefly for the benefit of the jury the nature of Exhibit 21.

A. This is an AIRTEL to the Director of the FBI

dated January 1, 1969 from the special agent in charge of the Washington Field Office entitled COINTELPRO - Black Nationalist - Hate Groups, Racial Matters, Black United Front, and it encloses for the Bureau two separate news releases concerning the BUF.

Q. Now, sir, do your initials appear on this document?

A. Yes, sir.

Q. And what do your initials indicate? What is the significance of your initials being on the document?

A. That I approved it and that I approved it for being sent to the FBI Headquarters.

Q. And who is the author of this document?

A. H. G. E. That would be Harry Ervin.

Q. Would he also have been, to the best of your knowledge, the author of the two news releases referred to in the document?

A. I would think so.

Q. Now, looking at the bottom of the first page of that document, sir, there is a bit of writing, what appears to be names and initials. Would you identify, please, what you can decipher as to the initials that appear at the bottom of that page.

A. Well, there are the initials R. J. O, which I believe is Robert Olmert, and it says "Post" on it. That's an administrative procedure that we had in the

Field Office. It would indicate to me that Mr. Olmert was the supervisor of that squad in October of '69. And then there's written the name of Wall, W-a-l-l, and R. something W. is beside it, his initials, which would indicate that this material was sent to Mr. Wall.

Q. And who is Mr. Wall or who was Mr. Wall?

A. Mr. Wall was on the squad with Mr. Ervin, and his name was Robert Wall.

Q. Was he an agent on the squad at that time?

A. Oh, yes, sir.

Q. And do you recall what his interest, if any, would have been in this document?

A. He could have been the coordinator at that time, but I can't say that for a fact.

Q. Coordinator of what, sir?

A. Of the COINTELPRO - Black Nationalist - Hate Groups. At any rate, whoever Mr. Olmert deemed it necessary that this matter be brought to his attention -- but I'm not certain as to his specific interests in it.

Q. Mr. Olmert deemed it necessary to bring it to Mr. Wall's attention?

A. That is correct.

Q. Now, this document makes a proposal or is part of a proposal that the testimony previously has been -- that the two separate news releases be provided to Headquarters.

To your knowledge, were these news releases ever published in any newspaper or other publication?

A. I have no knowledge of it, sir.

Q. Now, Mr. Jones, I'd like now to turn to another exhibit, No. 23. Do you have that before you, sir?

A. Yes.

Q. Would you describe briefly for the jury what the nature of Exhibit No. 23 is.

A. This is a letter from the special agent in charge, New York, to the Director of the FBI entitled COINTELPRO - New Left. And it encloses a suggestion under the counterintelligence program.

Q. And where, sir, did this document originate?

A. It originated in New York, FBI Office. No copy was sent to our office.

Q. Would you under the normal procedures existing at the FBI at that time have seen this document at the time or during the time that it was being transmitted?

A. No, sir.

Q. Can you tell from the fact of the document who is the author of this memorandum?

A. Only by the initials, B. P. M. B, as in boy, P as in Paul, M as in Mary.

Q. Now, do you know the name of the person whose initials are B. P. M.?

A. I don't recognize it.

Q. Would he have been an agent in the Washington Field Office?

A. No, sir.

Q. Where would he have been assigned?

A. He was in New York.

Q. From your examination of this document and from your understanding of FBI procedures, would the person identified as B. P. M. have been the person normally who prepared the attachment to this document?

A. Probably.

Q. Do you recall the first occasion on which you saw this document?

A. I believe it was shown to me by either you or Mr. Schember some months ago. Oh, six, -- I can't remember -- it was about May of 1981 -- May or June.

Q. Now, looking at Exhibit No. 24, would you describe briefly, sir, the nature of this document and how it relates, if at all, to Exhibit No. 23.

A. This is an -- this is a document prepared at the FBI Headquarters and it says from the Director of the FBI to the SAC - New York, and it makes reference to the previous communication that we spoke of dated October 10, '69, and it says, "Authority is granted to carry out the suggestion in that.." --

Q. In Exhibit 23?

A. In Exhibit 23, yes.

Q. Thank you, sir.

Is there any indication on the face of this document which would indicate that a copy of it was sent to the Washington Field Office?

A. No, sir.

Q. Under the normal procedures existing in the FBI at that time, would you have seen this document?

A. No, sir.

Q. Do you recall, sir, the first occasion on which you saw this document?

A. It would have been, as I said earlier, in about May, 1981.

Q. Sir, at the bottom of Exhibit 24 appear a number of handwritten initials. To the best of your knowledge, are any of those initials by persons assigned at that time to the Washington Field Office?

A. No, sir.

Q. Where would they have been assigned?

A. At the FBI Headquarters.

Q. Thank you.

Turning now, sir, to Exhibit No. 25, would you please describe briefly the nature of Exhibit 25.

A. This is a communication to the Washington Field

Office from the New York Office entitled COINTELPRO - New Left, and it encloses items made that were described -- that were made reference to in Exhibits 23 and 24 for the Washington Field Office.

Q. Who was the -- from your examination of the document, who was the author of this memorandum?

A. B as in boy, P as in Paul, M as in Mary, B. P. M.

Q. Sir, if you'll look again in the right-hand corner, there is a block stamp appearing there?

A. Yes, sir.

Q. Is there a name in that block stamp?

A. It is Wall, W-a-l-l.

Q. And are there initials appearing -- appearing on this document regarding -- well, are there initials appearing next to the name Wall?

A. Yes, sir. It looks like it's R. something W. That would indicate that this communication with the enclosures was sent to Mr. Wall by his supervisor.

Q. Now, Mr. Jones, there is some handwriting which appears on the left-hand corner, more or less under the initials B. P. M.

A. Yes.

Q. And can you read that handwriting?

A. I can't make it out. It begins with a C. I

can't make it out.

Q. Thank you, sir.

Is there anything on that -- do you have any recollection of having seen this document at the time it was transmitted?

A. I did not -- I do not have any such --

Q. Any such recollection?

A. -- recollection.

Q. Is there anything on the document to indicate that you, in fact, saw it?

A. No, sir.

Q. Now, if you would look back again at Exhibit 23, which has the attachment that we've been referring to --

A. Yes, sir.

Q. -- do you recall seeing that document at the time that it arrived in the Washington Field Office?

A. I do not.

Q. The attachment is what I want you to look at, sir.

A. I do not.

Q. When, to the best of your recollection, was the first occasion on which you saw that document?

A. It was in May of '81.

Q. Now, Mr. Jones, you've testified earlier regarding

matters occurring in the FBI Headquarters and matters occurring in the Washington Field Office. Where was the FBI Headquarters physically located in 1969 and 1970?

A. It was located in the Department of Justice Building at 9th and Pennsylvania with an adjunct over on 9th Street -- at 9th and -- between Pennsylvania Avenue and probably D or E Street.

Q. Was there any part of FBI Headquarters located in the same building in which your office was located?

A. Possibly in exhibits section.

Q. And what was the function of the exhibits section?

A. To prepare mock-ups of buildings and things of that nature.

Q. For what purpose?

A. For court purposes.

Q. Now, sir, Mr. Schember asked you a number of questions regarding the matter of electronic surveillance. Would you state generally for us briefly what was the nature of your function and duties, if any, at the Washington Field Office regarding the question or the issue of electronic surveillance.

A. If an agent desired to propose one, he discussed it with his supervisor, who in turn discussed it with me. Sometimes it would be orally, sometimes it would be in writing. If the communication was prepared and I felt it was justified,

I then would see to it that it was sent up to the agent in charge. I did not have the authority to approve the recommendations.

Q. Who had such authority?

A. Only the special agent in charge. This was a policy of the FBI in every FBI office.

Q. Now, sir, if you would look at Exhibit No. 46 -- do you have that before you?

A. Yes.

Q. Does this document relate to a recommendation for institution of electronic surveillance?

A. Yes, it does.

Q. And what was the recommended target or subject of the electronic surveillance?

A. The National Committee to Combat Fascism, a Racial Matter.

Q. If you would look, sir, at the top of the document where it indicates who it's to and who it's from, would you read that to the jury, please?

A. It says to the Director, FBI, with a file number, and from the SAC-WFO with a file number. It's dated 5-5-70, and there's a P as in Paul, by SAC-WFO.

Q. And what is the significance of the initial P?

A. This indicate that this is approved by Joseph Purvis, who was the agent in charge.

Q. Was Mr. Purvis at this time your immediate superior in the Washington Field Office?

A. Yes, sir.

Q. Now, Mr. Jones, who, to your knowledge, established the procedures and regulations governing the recommendations and the approval process for electronic surveillance?

A. I would assume that it was done by Mr. Hoover.

Q. Do you have any personal knowledge?

A. I have no personal knowledge.

Q. Now, sir, if you would look at Exhibit No. 49.

A. I have it.

Q. Now, sir, is this also a document recommending -- is this also a document making a recommendation regarding the electronic surveillance referred to in Exhibit No. 46?

A. I can't tell for certain because there is a different character.

Q. Sir, if you'll look at the paragraph 2 -- paragraph No. 2 on Exhibit 49 --

A. Yes.

Q. -- and compare it to the same paragraph -- or to paragraph 1 on Exhibit 46, does it appear, sir, that the addresses referred to there are identical?

A. The addresses are the same.

Q. Now, at the top of the document, would you read

to the jury, please, who this memorandum is to and who it is from.

A. This is to the Director of the FBI from the special agent in charge of the Washington Field Office, and it's dated June -- it's dated 8-17-1970.

Q. And is there an initial appearing next to the designation SAC?

A. It's K as in Kunkel.

Q. What was the name of the SAC at that time?

A. It was obviously Mr. Kunkel, Robert Kunkel, K-u-n-k-e-l.

Q. Did he succeed Mr. Purvis in that position?

A. Yes, I believe so. Yes.

Q. And does that initial indicate that Mr. Kunkel personally approved the document?

A. Yes, sir.

Q. Thank you.

Now, sir, if you'd look at Plaintiffs' Exhibit No. 52.

A. I have it.

Q. Would you describe for the jury, please, the nature of this exhibit.

A. This is the recommendation for the installation of a technical surveillance or microphone surveillance. It's sent to the Director of the FBI from the special agent

in charge of the Washington Field Office. It's dated March 19, 1971, and it pertains to the demonstration sponsored by the People's Coalition for Peace and Justice, Washington, D. C., May, 1971.

Q. Sir, if you will look at the -- again at the top of the document -- as to who it's to and who it's from, is there an indication -- well, from your examination of the document and from your personal recollection, who was the special agent in charge of the Washington Field Office on that date, March of 1971?

A. Robert Kunkel.

Q. And do his initials appear on this document Exhibit 52?

A. They do. K.

Q. I'm sorry?

A. There is a K on it to indicate that he approved it.

Q. Now, sir, if you'd look at Exhibit No. 58 --

A. Okay, I have it.

Q. -- would you describe to the jury, please, sir, what this exhibit is.

A. This exhibit is to the Director of the FBI from the special agent in charge of the Washington Field Office. It's dated June 22, 1971, and the subject matter is justification for continuation of technical surveillance,

and the title is the People's Coalition for Peace and Justice. It would appear that it concerns the previous document.

Q. Sir, your testimony was June 22, 1971. Would you look again at the date on Exhibit 58.

A. Did I say June? I beg your pardon. It is April 22, 1971.

Q. Thank you, sir.

Now, was this document approved by the special agent in charge?

A. There is a K on it, which indicates that it was approved by Mr. Kunkel. He was the special agent in charge in April of 1971.

Q. Sir, who, to your knowledge, was the final authority necessary in order to approve installation of these two electronic surveillances?

A. Mr. Hoover, who was the Director of the FBI, and the Attorney General.

Q. To the best of your recollection, was the authorizati of the Attorney General required before the FBI could institute such a surveillance?

A. Yes, sir.

Q. And to the best of your recollection, was that authority granted by the Attorney General in connection with these two electronic surveillances?

A. I would have to assume so.

Q. Now, sir, if you would turn to Exhibit 69 --

A. Okay, I have it.

Q. -- would you describe briefly, sir, the nature of that document.

A. This is a document to the Director of the FBI from the special agent in charge of the Field Office, that is, the Washington Field Office. It is dated 7-17-70, and it's entitled COINTELPRO - New Left. The communication says that there are enclosed two copies of an article appearing in the Quicksilver Times newspaper.

Q. Now, sir, looking at the bottom of the left-hand of the document, there are initials appearing there, typewritten initials. Can you read those initials?

A. E as in Edward, J as in John, W.

Q. Do you know -- does that indicate the author of this document?

A. Yes, sir.

Q. And do you know the name -- whose initials -- the name of the person whose initials were E. J. W.?

A. I don't recall it offhand.

Q. Is there anything, sir, on this document that would indicate that you saw it at the time it was prepared and transmitted from the Washington Field Office to the Director?

A. No, sir.

Q. To the best of your recollection, did you see this document at that time?

A. I have no recollection of it.

Q. To the best of your recollection, when was the first time you saw this document?

A. Probably in April of 1981.

THE COURT: Excuse me. What was the number again?

MR. WHITE: Oh, I'm sorry, sir. This is Exhibit No. 69.

THE COURT: Thank you.

BY MR. WHITE:

Q. Mr. Jones, if you would look at Exhibit No. 70 --

A. Yes, sir.

Q. -- would you describe that, please, briefly to the jury.

A. This is a communication to the Director of the FBI from the special agent in charge of the Washington Field Office dated 12-15-70 entitled COINTELPRO - New Left. And it is a summary of what the Washington Field Office had done in the COINTELPRO area, presumably since May of 19 -- no, I don't know. It's a summary.

Q. But you --

A. A periodic summary which we submitted every three or six months. I don't remember which.

Q. Can you identify from that document who its author was?

A. It is also -- that may be a B. J. W. It looks like a B. J. W. in this instance. B as in boy, J John, W White.

Q. Do you have any recollection as to --

A. No. I don't. I just don't recall it at this moment who B. J. W. is.

Q. Looking at this document, it is possible that that was an E rather than a B, on that document?

A. Would you repeat --

Q. I'm sorry, sir. On the initials that you've just been looking at, is it possible that that's an E rather than a B?

A. Yes, it is possible. It looks more like a -- it could be either an E or a B.

Q. Is there anything on this document which would indicate -- I'm sorry, sir, could you state the date of the document?

A. It's dated December 15, 1970.

Q. Is there anything on the face of the document which would indicate that you saw it at the time that it was prepared and transmitted from the Washington Field Office to the Director?

A. No, sir.

Q. Now, if you would look, please, sir, at the "From" line, yes, there are handwritten initials appearing there --

A. Yes, sir.

Q. -- can you identify those initials?

A. The initials from -- it looks like R. K. and J. P. R. K. is the initials of our agent in charge, who was Mr. Kunkel, and that's the procedure, to put his initials and then your own. And then there appears those of J. P., which were John Palmer.

Q. This indicates that John Palmer signed for the SAC at this time?

A. Correct.

Q. And who was John Palmer in the -- what was his position?

A. John Palmer was the supervisor of the New Left Squad in December of 1970.

Q. Did he have authority at that time as a squad supervisor to sign out mail so that it was transmitted from his desk directly to FBI Headquarters?

A. He did.

Q. Do you have any recollection as to whether you saw this document at that time?

A. I have no recollection of having seen it at that time.

Q. I'm not sure if I asked you this, sir, but I hope I'm not repeating a question. Is there anything else in that document that would indicate that you, in fact, saw it?

A. I believe that you did ask me that, and there isn't anything on the face of the three pages to indicate that I saw it at the time that it was prepared and sent over to the FBI Headquarters.

Q. Mr. Jones, if you would look now at the last exhibit, No. 71, --

A. Okay.

Q. -- would you describe for the jury, please, sir, what this is.

A. This is a Teletype to the Director of the FBI, SAC - Chicago and New York, from the special agent in charge of the Washington Field Office entitled New Mobilization Committee to End the War in Vietnam, demonstration at Washington, D. C., November 15, 1969, and with some other names like David Dellinger. It's dated 10-21-69, and it was prepared by P. W., I believe. P. M. W. it appears to be, who would have been Philip Wilson.

Q. Are there -- if you'll look at -- if you would continue to look -- I know you're at the bottom of the document now -- if you'll continue to look at the bottom of the document, do you see there any handwritten initials

on this document?

A. The initials of J. -- there appear the initials of J. P., which would have been those of John Palmer, who was the supervisor of the squad, which would indicate that he approved this Teletype to be sent to the Bureau. There were also the initials and the name of Mahoney, and the initials J. -- I presume it's M.

Q. Would those initials next to the name Mahoney indicate that the person named Mahoney actually saw the document or received it?

A. It indicates that Mr. Palmer felt that this matter should be brought to the attention of special agent -- of special agent Mahoney, and that it was sent to him and he saw it, that he initialled it.

Q. Did Mr. Palmer at that time have authority to transmit -- to approve the transmission of this kind of Teletype to Headquarters?

A. He did.

Q. He did?

A. Yes, he did.

Q. All right.

Is there anything on this document to indicate -- well, before I ask that one, sir, do you recall whether or not he saw this document at the time that it was prepared and transmitted?

A. I have no recollection of having seen it in October of 1969.

Q. And is there anything on the document which would indicate that you, in fact, saw it?

A. No, sir.

Q. And do you have any recollection as to when you first saw this document?

A. It was probably displayed to me in May of 1981.

Q. Finally, sir, you've testified in response to some questions from Mr. Schember about your understanding of the Security Index. Would you tell the jury again, please, what the Security Index was?

A. It is my recollection that in the 1940's, following World War II, the end of World War II, that the FBI had an index of names of people who could be identified quickly in the event of a crisis -- a war crisis or any emergency of that style. And this index was maintained for several years. I can't remember -- perhaps 10 or more or less.

Q. What was the purpose to which this index would have been put if there was a national emergency?

A. The people whose names appeared therein were considered to be dangerous to the security of the country. And should there have been a war or a crisis of that nature, then consideration would have been given to following or

the, I guess, legal procedures and having them arrested.

Q. To the best of your recollection, Mr. Jones, were those procedures ever instituted during the time that you were employed in the Federal Bureau of Investigation?

A. They were instituted -- some procedure was instituted in December of 1941, and I was in the FBI then, and some German aliens were picked up.

Q. Bringing us back to a little more recently, during the period of 1964 to 1974, were those procedures implemented?

A. Not to my knowledge, I don't think so, by any means.

MR. WHITE: Thank you, sir. That's all I have.

THE COURT: Ms. Bonn?

MS. BONN: Your Honor, the District of Columbia has no cross-examination of this witness.

THE COURT: Very well. Mr. Schember?

REDIRECT EXAMINATION

BY MR. SCHEMBER:

Q. Good morning, Mr. Jones.

A. Fine, sir. How are you?

Q. You testified that in your position as the Security Coordinator that you were responsible for the smooth functioning of the counterintelligence programs, is that correct?

A. Yes, sir.

Q. And the purpose of those programs was to disrupt the New Left and black groups, isn't that correct?

A. I believe that was one of the purposes.

Q. And one of the purposes utilized by the Washington Field Office to do that was to interfere with radio communications of the New Mobilization Committee on January 20, 1969, isn't that correct?

A. Would you repeat that? Are you asking me or are you making a statement? I'm sorry?

Q. I'm asking you isn't it correct that one of the methods used was interference with radio communications of the New Mobilization Committee on January 20, 1969?

A. Yes, sir.

Q. And another technique utilized by the Washington Field Office in implementing these programs was to prepare news releases to create dissention and sow mistrust among the members of the New Left?

A. Yes, sir.

Q. And these acts implementing the counterintelligence program were carried out by your subordinates?

A. Yes, sir.

Q. Mr. Wall was your subordinate?

A. Yes, sir.

Q. Mr. Ervin was your subordinate?

A. Yes, sir.

Q. Mr. Schlarman?

A. Yes, sir.

Q. Mr. Palmer?

A. All of them -- specifically, yes, to Mr. Palmer.

Q. During the time period that the counterintelligence programs were being implemented, did you ever speak with Mr. Palmer, Schlarman, or Mr. Wall, Mr. Ervin and inform them that in your view that they were not carrying out the counterintelligence program in a way that was consistent with the purposes of that program?

A. I probably turned down some of their suggestions.

Q. But the ones that were -- you personally reviewed some of their suggestions?

A. I'm certain that I did.

Q. And you turned down some?

A. I said I probably did.

Q. And you approved others?

A. Yes, sir.

Q. Including the approval for the preparation of the Rational Observer?

A. Yes, sir.

Q. Including the approval for the preparation of the news releases designed to tarnish the image of Julius Hobson?

A. Yes, sir.

Q. Mr. Jones, have you ever heard of the name Eric J. Wall?

A. It doesn't mean anything to me now. To answer you, I don't recall that name.

Q. Mr. Jones, one of your responsibilities as the Security Coordinator was to supervise the squad that implemented electronic surveillance, was it not?

A. Yes, sir.

Q. Do you recall -- I don't recall whether this has been asked -- do you recall the designation for that squad?

A. It changed over the years.

Q. Was it at one time known as S-8?

A. I believe -- yes, yes.

Q. Does the name Tech Squad mean anything to you?

A. That was the same squad.

Q. Do you recall during the time period -- Mr. Jones, during the time period that the wiretaps approved by the Attorney General that we've been referring to were implemented, do you recall what the criteria were for approval of implementation of that type of wiretap?

A. The criteria for the recommendation or the approval by the Attorney General?

Q. Let's start with that. What were the criteria

for recommendation of such a wiretap?

A. You mean from the Field Office level?

Q. Yes, sir.

A. The criteria would have been that it was needed, it was felt that it was justified, and that it was proper.

Q. Mr. Jones, do you recall ever seeing at that time guidelines prepared by the Justice Department concerning the circumstances under which such a wiretap would be appropriate or approvable?

A. I don't recall having seen such, but if there were any, I assume that I saw them at one time or another.

Q. Mr. Jones, did you understand at that time that there were any limits on the circumstances under which a wiretap of this kind could be approved?

A. By whom, Mr. Schember?

Q. By the Attorney General.

A. I don't mean to be flippant, but he's his own -- he's his own man, and I don't know what he did.

Q. And who was the Attorney General at that time that these wiretaps that we've been referring to were implemented, do you recall?

A. Let's see. This was 1968 through '72?

Q. During that time period, yes.

A. Mr. Nixon was President -- it could have been Mr. Brownell -- not Brownell -- Mr. Brownell was under

Eisenhower. Mr. Mitchell or Mr. Kleindeinst are the ones that I remember.

Q. Was Mr. Mitchell his own man?

A. That is --

MR. WHITE: I object to that question as being a little bit inappropriate.

THE COURT: I don't think he formed that enough. You can develop that.

THE WITNESS: Where am I?

BY MR. SCHEMBER:

Q. I was asking you, Mr. Jones, whether Mr. Mitchell was a person you characterized s his own man.

A. That is -- that is a matter of opinion. I mean, you have yours, perhaps, and I have mine, and others have theirs.

MR. SCHEMBER: That's all I have, Your Honor. Thank you.

THE COURT: Do you have anything further?

MR. WHITE: No, Your Honor.

THE COURT: Thank you.

(Witness excused.)

THE COURT: Next witness, please.

MS. PILSBURY: Our next witness, Your Honor, will be Mr. Brennan.

Whereupon,

CHARLES BRENNAN

was called as a witness on behalf of the Plaintiffs, and after being first duly sworn, testified as follows:

THE COURT: Let me explain something to counsel and to the jury. We are going to go to 11:00, and then we will have to adjourn longer than usual this morning because we have another emergency matter. So we'll have a longer than usual break, but we will resume before lunch.

DIRECT EXAMINATION

BY MS. PILSBURY:

Q. Mr. Brennan, my name is Anne Pilsbury. Together with Mr. Schember and J. E. McNeil, I represent the Plaintiffs in this case.

Would you please state your full name and your current address.

A. My name is Charles D. Brennan. I reside at 4807 North Owen Street, Alexandria, Virginia.

Q. And do you know whether or not you are a Defendant in this action?

A. Yes, I am.

Q. Are you currently employed?

A. No.

Q. Are you retired?

A. Yes.

Q. Did you formerly work with the FBI?

A. Yes.

Q. How long did you work with the FBI?

A. From April, 1948 until July, 1974.

Q. Is that when you retired?

A. Yes.

Q. Now, in the period of 1964 to 1971 what division of the FBI were you working in?

A. I was in the domestic intelligence division at FBI Headquarters.

Q. Did you ever work in the Washington Field Office?

A. Yes, I did.

Q. That would have been prior to this time?

A. Yes.

Q. But from '64 to '71 you were at Headquarters?

A. Yes.

Q. Now, what position did you hold during that period in the domestic intelligence division?

A. In 1964 I was in the Central Research section. And along about that time, I was transferred to the Internal Securities section. There I was the number one man or the assistant to the section chief until approximately December, 1966 when I was made section chief.

Q. Chief of what?

A. Chief of the Internal Securities section. And I was in that capacity until September of 1970, when I

was designated as Assistant Director in charge of the division.

Q. In charge of the whole Domestic Intelligence division?

A. The Domestic Intelligence division, yes.

Q. And then after 1971, where were you assigned?

A. In September, 1971 I was designated chief inspector of a special investigations office at the FBI Headquarters, and in October of 1972 I was designated special agent in charge of the Alexandria office in Virginia of the FBI. And in April of 1974 I was designated special agent in charge of the Salt Lake City, Utah office of the FBI.

Q. Directing your attention to the position you held immediately after you were acting as chief of Domestic Intelligence, I believe you described that as Special Operations?

A. Yes.

Q. What's the function of that particular part of the FBI?

A. The Special Operations office was created at that time to afford special supervision to leak cases, leaks of governmental information.

Q. Would it be correct to say that the responsibilities that you had in that position dealt with the same subject

matter that you had been concerned with in Domestic Intelligence?

A. No, it was entirely different.

Q. Entirely different, okay.

Directing your attention, then, to your functions while you were working in the Domestic Intelligence division, could you just describe very generally what that division was charged with, what its responsibilities were?

A. Generally, it was charged with the supervision of all security investigations conducted by the FBI Field Offices throughout the United States.

Q. When you say security investigations, could you describe that a little more fully?

A. They were investigations into subversive activities, also investigations involving counterespionage of -- the efforts of agents of foreign powers to operate inside the United States.

Q. Is this also the division that investigates people when they are nominated for high government positions?

A. No, it is not.

Q. What division does that, if you recall?

A. That was a -- that was called a special inquiry type investigation, and I do not believe that our division was involved in that, and specifically which division really -- at the moment, I can't tell you.

Q. Okay. Well, we'll move on to something else.

When you became chief -- I'm sorry -- after you were chief of the Internal Security division, I believe you indicated that you became the head of the whole Domestic Intelligence division, is that correct?

A. Yes.

Q. And what was your title then?

A. Assistant Director.

Q. Assistant Director? How many other Assistant Directors were there at the time? Were you the Assistant Director?

A. No, there were 10 others.

Q. And for how long were you Assistant Director?

A. For one year.

Q. Now, could you just describe very briefly when you moved up from chief of Internal Security to Assistant Director of the whole division, what new areas did that add to your responsibilities?

A. It added basically espionage investigations.

Q. Oh, espionage hadn't been under Internal Security?

A. No.

Q. Now, you're familiar with the term counterintelligence are you not?

A. Yes.

Q. And the division that you were working in was

called Domestic Intelligence. Is there a difference between counterintelligence and domestic intelligence?

A. Yes.

Q. What's the difference?

A. Counterintelligence generally refers to efforts to combat the activities of foreign agents inside the United States, and domestic intelligence involves itself with the subversive activities of individuals who reside in the United States.

Q. So -- in other words, is the distinction -- counterintelligence generally refers to foreign people and domestic intelligence refers to Americans?

A. That generally is accepted to be the definition within the terms of the intelligence field.

Q. Was the program Counterintelligence - New Left under you at the time that you were Associate Director?

A. Yes.

Q. Or Assistant Director of Domestic Intelligence?

A. Yes.

Q. Now, was that a counterintelligence program in the sense that you've just described the term?

A. No, but that was simply a name that was applied to it, and if I recall correctly, I think that it applied to both foreign aspects and domestic aspects.

Q. So what would the word "counter" signify in reference

to the New Left?

A. It means to work against, really.

Q. Would it be correct to say that the domestic intelligence function was one of gathering information and the counterintelligence function was one of using that information against the group?

A. Within that framework.

THE COURT: We'll adjourn here.

We'll first adjourn the jury. I expect you ladies and gentlemen will have a 30-minute recess. Please be back by 11:30. You may have to stay there a little longer, but if you would be back there, I would appreciate it.

(Whereupon, the jury left the courtroom.)

(Jury not present.)

THE COURT: I shouldn't be more than 45 minutes, so why don't you make yourselves available here at 11:30.

(Whereupon, a recess was taken.)

AFTER RECESS

(11:30 a.m.)

THE COURT: Bring back the jury.

(Before the jury.)

Whereupon,

CHARLES BRENNAN,

the witness at the time of recess, resumed the stand and

testified further as follows:

DIRECT EXAMINATION (continued)

BY MS. PILSBURY:

Q. Mr. Brennan, in your capacity as head of the Internal Security section, did you have occasion to prepare a memo in 1968 which outlines the purposes of a program known as COINTELPRO - New Left?

A. I don't believe I did.

Q. Do you recall the title COINTELPRO - New Left?

A. Yes.

Q. What does that mean?

A. Counterintelligence program.

Q. And regardless of whether or not you recall the memo, do you recall the program?

A. Yes.

Q. What was the purpose of the program?

A. To neutralize and to disrupt organizations under investigation by the FBI whose activities were considered to be inimical to the interests of the United States.

Q. And do you recall when this program came into existence?

A. The counterintelligence program?

Q. COINTELPRO - New Left.

A. Around 1968.

Q. Were there other COINTELPRO programs already

in existence?

A. Yes.

Q. Was there one called COINTELPRO - Black Nationalist - Hate Groups?

A. I believe so.

Q. Did you have any responsibility for that?

A. I believe I did for a period of time.

Q. When you were in charge of the Domestic Intelligence division?

A. Yes.

Q. Would it be correct to say that when you were in charge of the Domestic Intelligence division you had overall responsibility for all the COINTELPRO programs?

A. Yes.

Q. They were part of the Domestic Intelligence division?

A. That's right.

Q. Were there particular units that were doing just COINTELPRO projects?

A. Yes.

Q. Did the divisions who were not engaged solely in COINTELPRO activities work with the units that were doing COINTELPRO activities?

A. The divisions?

Q. I'm sorry, the sections.

A. Yes.

Q. Now, can you explain, if you recall, what prompted the Bureau in 1968 to create a program to disrupt and neutralize groups in the New Left?

A. It was an extension of an existing program.

Q. What was the existing program?

A. Counterintelligence program.

Q. You mean there already was a counterintelligence program against the New Left?

A. No, there was a counterintelligence program.

Q. And this was an extension of it?

A. Yes.

Q. Now, I'm going to show you a document marked for identification as Plaintiffs' Exhibit 3 in evidence, Mr. Brennan. Take a minute and look at that document, if you will.

You indicated that you didn't recall writing a memo in 1968 on COINTELPRO - New Left. Does this document refresh your memory?

A. I've seen it before, yes.

Q. Does it refresh your memory as to whether you wrote a memo in 1968 creating COINTELPRO - New Left?

A. I didn't write it.

Q. Is your name on it?

A. Yes.

Q. Are you saying that you didn't write it in the sense that someone else drafted the memo for you?

A. Yes.

Q. But it is from you, is it not?

A. Yes.

Q. And it's to a Mr. William C. Sullivan?

A. That's right.

Q. Who was Mr. Sullivan at that time?

A. He was the Assistant Director in charge of the Domestic Intelligence division.

Q. And that was a position that you later acceded to?

A. That's right.

Q. So at this time Mr. Sullivan was your boss?

A. That's right.

Q. How did your name come to be on this memo in 1968 if you didn't write it?

A. That's the way the system operated.

Q. Did you have anything to do with it?

A. Yes. As section chief, I had to review it, and if I approved it, to transmit it to Mr. Sullivan. I would put my initials on it.

Q. So you had told somebody to prepare a memo for your signature, isn't that correct?

A. No.

Q. How did it work?

A. Each supervisor or unit chief had individual responsibility for developing his own programs.

Q. In other words, you're telling us that COINTELPRO - New Left sprang from the mind of one of your subordinates?

A. Yes.

Q. And was sent to Mr. Sullivan for approval?

A. Yes.

Q. Did you endorse the idea?

A. Yes, by my initials.

Q. And was this program approved by people over Mr. Sullivan, if you recall?

A. Yes.

Q. Was it Bureau policy?

A. Yes.

Q. And would a program of this nature be brought to the attention of the Director?

A. Yes.

Q. Now, what did the term New Left mean to you in 1968?

A. It was an amorphous grouping which involved individuals from organizations such as the SDS, people who were opposed to the war in Vietnam -- a broad spectrum of individuals who were engaged in social dissent.

Q. Now, you testified a moment ago that when I asked

you what prompted the Bureau to create this program in 1968, that it was a continuation of an earlier program.

A. An extension.

Q. An extension. Had the earlier program specifically targeted the New Left?

A. No.

Q Directing your attention to the first paragraph of this memo, Mr. Brennan, would you take a minute and read that over and see if that refreshes your memory as to some of the reasons why the Bureau saw fit to extend the program to the New Left in 1968.

A. Yes.

Q. And what were some of those reasons?

A. It states here, "Some of these activists urge revolution in America and call for the defeat of the United States in Vietnam. They continually and falsely allege police brutality, and do not hesitate to utilize unlawful acts to further the so-called..." -- I'm sorry. "Some of these activists urge revolution in America and call for the defeat of the United States in Vietnam. They continually and falsely allege police brutality, and do not hesitate to utilize unlawful acts to further their so-called causes. The New Left has on many occasions viciously and scurrilously attacked the Director and the Bureau in an attempt to hamper our investigation of it,

and to drive us off the college campuses."

Q. Can you describe what the FBI was doing on college campuses in 1968?

A. Conducting investigations.

Q. Domestic Intelligence investigations or criminal investigations?

A. Both.

Q. One more than the other?

A. Yes, Domestic Intelligence investigations.

Q. Now, Mr. Brennan, is there an explanation of what the term New Left embraced or a definition of it in this memo that was written in 1968?

A. No.

Q. Were the Field Offices notified of this new program, do you recall?

A. Yes.

Q. Would they have been notified around the same time as this memo was written, May of 1968?

A. That's right.

Q. And would they be notified by sending them a copy of the document you have before you?

A. The attachment.

Q. Okay. You're referring to the document that's been -- that's attached to Plaintiffs' Exhibit 3, correct?

A. That's right.

THE COURT: That's an argument.

MS. PILSBURY: Okay, Your Honor.

BY MS. PILSBURY:

Q. Would it be correct to say, Mr. Brennan, that the central feature which characterized individuals that you designated as New Left was opposition to the war in Vietnam?

A. No.

Q. What would be the central feature, if there was one?

A. The advocacy of revolutionary tactics.

Q. Can you explain what you mean by "revolutionary tactics"?

A. Yes. The advocacy of utilizing violence in order to smash the existing system.

Q. So individuals who did not advocate the use of violence to smash the existing system would not be embraced in the term New Left?

A. No, that's not true. I said it was an amorphous grouping that comprised a wide range of individuals.

Q. Were there individuals embraced in that term who did not advocate violence?

A. I'm sure there were.

Q. And what would it have been about their activities that would have caused them to be included in the term

is that transcript in error?

A. That was only partly the -- an answer in part to the question, which was not in full context.

Q. Did you give a longer answer than what I have just read at point to that question?

A. Not at that point.

Q. Is it correct to say that you did conclude there was no foreign funding of the peace movement?

A. That's true.

Q. But I take it you felt there was still foreign influence?

A. Yes.

Q. Now, we may have covered this earlier on direct. Could you just state again what the goals --

THE COURT: This is direct.

MS. PILSBURY: I realize that, Your Honor.

THE COURT: You said you may have covered it on direct.

MS. PILSBURY: I'm sorry. I know I'm still on direct.

BY MS. PILSBURY:

Q. Could you just state again what the goals of COINTELPRO - New Left were?

A. To neutralize and disrupt organizations or individuals who were then under investigation by the FBI

in connection with activities which were inimical to the interests of the United States.

Q. If individuals had actually been engaged in activities that were inimical to the interests of the United States, weren't there criminal laws to deal with this?

A. In some areas, yes, but in others, no.

Q. Could you describe the instances in which you felt individuals would be acting contrary to the interests of the United States and yet there wouldn't be any criminal law to cover their activities?

A. Where the individuals would be organizing so-called peaceful demonstrations which also served as a cover for violent activities.

Q. But if violence occurred, wouldn't there be local police statutes, disorderly conduct laws that would cover that?

A. Yes, there would.

Q. So what was the FBI's interest?

A. The FBI's interest had to do with the fact that there were indications that some individuals planned to use the cover of those demonstrations to engage in violent activities, and our responsibility was to try to ascertain the nature of the planned violence to keep other law enforcement agencies advised.

Q. Did you do anything other than simply try to

find out about planned violence?

A. If possible, we tried to disrupt the planning.

Q. In order to prevent the violence?

A. Yes.

Q. Now, you've mentioned a couple of times individuals whose activities were inimical or contrary to the interests of the United States. Who was defining the interests of the United States in those situations?

A. In a broad realm, your knowledge of the laws of the United States.

Q. Who would be defining what those interests would be?

A. Most of the individuals who were involved in the FBI work.

Q. Now, in your endeavor to carry out these goals and prevent violence, and as you saw it, further the interests of the United States, did the FBI during the time that COINTELPRO - New Left was in operation work with other intelligence agencies and local police departments?

A. Yes.

Q. Do you know if this was true of all the COINTELPRO programs, generally?

A. Maybe I misunderstood your earlier question. Did you say -- could you repeat your earlier question for me?

Q. My question was in carrying out the goals of COINTELPRO - New Left, did the FBI work with other intelligence agencies and the local police?

A. Oh, I'm sorry. I misunderstood you. No. COINTELPRO was inside the FBI.

Q. I understand that, Mr. Brennan. My question is did you have the assistance or the cooperation or contact in any way with other intelligence agencies in carrying out this FBI program?

A. Not that I recall.

Q. Do you think it's possible that you might have?

A. I don't believe so.

Q. You have no recollection as to whether or not the FBI ever worked with the CIA on domestic intelligence and COINTELPRO investigations?

A. No.

Q. No recollection or no, you didn't?

A. No, I have no recollection of that.

Q. And you also have no recollection as to whether or not you worked with local police departments?

A. I don't recall that we did.

MR. WHITE: I would object to the question as being a little misleading as to what working with the local police departments means in the context of this.

THE COURT: Objection overruled.

BY MS. PILSBURY:

Q. I mean it in the broadest sense, Mr. Brennan.

THE COURT: Just ask your question.

BY MS. PILSBURY:

Q. Do you have any recollection of working with the local police department on COINTELPRO activities?

A. I don't recall that we did.

Q. Now, Mr. Brennan, you have referred a number of different reasons for the COINTELPRO program. I am going to show you two documents that have been marked for identification as Plaintiffs' Exhibits 28 and 29, both in evidence, and ask you to take a second and look those over.

Now, Mr. Brennan, I'm going to ask you a couple of preliminary questions first. When the memo was sent out to the Field Offices in 1968 informing them of COINTELPRO - New Left, what were the Field Offices' responsibilities?

A. To be alert for opportunities that they might exploit in connection with the program.

Q. And were they supposed to assign a particular agent to develop COINTELPRO projects?

A. No -- no.

Q. No?

A. No.

Q. Let me refer your attention again to Plaintiffs'

R. 280

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TINA HOBSON, ET AL., PLAINTIFFS,	:	CIVIL ACTION
- VS	:	NO. 76-1326
JERRY V. WILSON, ET AL., DEFENDANTS.	:	

WASHINGTON, D. C.

FRIDAY, DECEMBER 4, 1981

THE TRIAL IN THE ABOVE-ENTITLED ACTION WAS RESUMED BEFORE THE HONORABLE LOUIS F. OBERDORFER, UNITED STATES DISTRICT JUDGE, AND A JURY DULY EMPANELED AND SWORN, IN COURTROOM NUMBER THREE, COMMENCING AT TWO O'CLOCK, P. M., PURSUANT TO A LUNCHEON RECESS.

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

DANIEL SCHEMBER, ESQ.
J. E. MC NEIL, ESQ.
ANNE PILSBURY, ESQ.

- - -

CATHERINE MARY REBARICK
COURT REPORTER
U. S. COURTHOUSE
WASHINGTON, D. C. 20001

APPEARANCES (CONT'D):

ON BEHALF OF THE DEFENDANTS:

DAVID WHITE, ESQ.
DENNIS HOFFMAN, ESQ.
LAURA BONN, ESQ.
GEORGE BARCLAY, ESQ.

I N D E X

WITNESSES

FOR THE PLAINTIFFS:	DIRECT	CROSS	REDIRECT	RECROSS
CHARLES D. BRENNAN	4 (CONT'D)	59 (WHITE)	-	-
		102 (BONN)	103	-

EXHIBITS

FOR THE PLAINTIFFS:	IDENTIFICATION	EVIDENCE
NO. 105	-	39
NO. 69	-	40
NO. 70	-	40
NO. 31-A	-	49

THE COURT: WHILE HE'S DOING THAT, I SEEM TO HAVE AN ORIGINAL OF EXHIBIT 28, WHICH I SHOULDN'T HAVE. AND I DON'T HAVE ANY EXHIBIT 27. I HOPE I'M NOT SUPPOSED TO.

MS. PILSBURY: YOU'RE SUPPOSED TO, YOUR HONOR, BUT, UNFORTUNATELY, I ONLY HAVE ONE COPY.

THE COURT: DO YOU HAVE THE ORIGINAL?

MS. PILSBURY: YES, I DO, YOUR HONOR.

THE COURT: THAT'S ALL I'M WORRIED ABOUT.

BY MS. PILSBURY:

Q HAVE YOU HAD A CHANCE TO LOOK AT THOSE, MR. BRENNAN?

A TWENTY-SEVEN AND 28?

Q AND 29.

A YES.

Q THEY ARE ALL ABOUT THE SAME THING.

A YES.

Q AND WHAT ARE THEY ABOUT?

A ABOUT THE PREPARATION OF A PAMPHLET TO BE DISTRIBUTED AT AMERICAN UNIVERSITY CALLED "THE RATIONAL OBSERVER," SUPPOSEDLY FROM A SMALL GROUP OF STUDENTS WHO HAVE TAKEN EXCEPTION TO THE DEVELOPMENT ON THE CAMPUS AND ASKING THE FBI HEADQUARTERS FOR AUTHORITY TO PROCEED WITH THE PRINTING AND DISTRIBUTION OF THAT PAMPHLET.

Q AND WAS THAT AUTHORITY GIVEN?

A YES.

Q IS THAT REFLECTED IN EXHIBIT 29?

A YES.

Q AND THAT'S THE EXHIBIT I BELIEVE YOU INDICATED BEFORE LUNCH THAT HAS YOUR NAME ON IT, IN ADDITION TO SOME OTHER NAMES; DOES IT NOT?

A YES. THAT'S RIGHT.

Q DO YOU HAVE ANY INDEPENDENT RECOLLECTION OF THIS PARTICULAR PROJECT AT THIS TIME, WITHOUT REFERENCE TO THESE DOCUMENTS?

A NO.

Q DO YOU REMEMBER IT NOW THAT YOU'VE SEEN THE DOCUMENT?

A NO.

Q NOW, AT THIS TIME, WHICH WAS, I BELIEVE, THE DATE ON EXHIBIT 29, NOVEMBER 3RD, 1969, DO YOU KNOW WHAT YOUR POSITION WAS IN THE FBI?

A AT THAT TIME I WAS CHIEF OF THE INTERNAL SECURITY SECTION IN THE DOMESTIC INTELLIGENCE DIVISION.

Q WOULD IT HAVE BEEN IN THAT CAPACITY THAT YOU HAVE SIGNED OFF ON EXHIBIT 29?

A I DIDN'T SIGN OFF ON IT.

Q WHAT DOES YOUR SIGNATURE ON HERE INDICATE, OR YOUR NAME?

A THAT IS PUT ON THERE FOR ROUTING PURPOSES, SO THAT THE DOCUMENT WILL GO TO THE INTERNAL SECURITY SECTION.

Q DID YOU PUT YOUR NAME ON THERE, OR DID SOMEBODY

ELSE?

A SOMEBODY ELSE DID.

Q DOES IT INDICATE THAT IT'S A COINTELPRO PROJECT, OVER WHICH YOU HAD SOME GENERAL SUPERVISORY RESPONSIBILITY?

A YES.

Q NOW, DOES THIS PROPOSAL THAT YOU HAVE SEEN REFLECTED IN THESE DOCUMENTS FIT IN GENERALLY WITH THE GUIDELINES THAT YOU HAD OUT IN 1968 DESCRIBING COINTELPRO NEW LEFT?

A I DIDN'T SEND THEM OUT.

Q I'M SORRY.

IN THE DOCUMENT IN 1968 THAT HAS YOUR NAME ON IT.

A YES.

Q NOW, CAN YOU DESCRIBE GENERALLY, OR I GUESS, SPECIFICALLY, IF YOU CAN, HOW THE DISSEMINATION OF THIS STUDENT NEWSPAPER -- . I'M SORRY.

STRIKE THAT.

FIRST, THE STUDENT NEWSPAPER THAT'S REFERRED TO IN THESE DOCUMENTS WAS ACTUALLY WRITTEN BY MEMBERS OF THE FBI; WAS IT NOT?

A I BELIEVE SO.

Q DO YOU WANT TO TAKE THE DOCUMENTS AND REFRESH YOUR MEMORY, IF YOU'RE NOT SURE?

(PAUSE)

I WOULD DIRECT YOUR ATTENTION TO EXHIBIT 27,

ANTIWAR MOVEMENTS WERE COMMUNISTS OR SELF-PROFESSED REVOLUTIONARIES.

Q BUT WITH SPECIFIC REFERENCE TO THE STUDENTS AT AMERICAN UNIVERSITY, DID THE FBI EVER MAKE ANY PUBLIC STATEMENT OR PRESS RELEASES OR ANNOUNCEMENTS ON THE CAMPUS AS TO ITS CONCERNS ABOUT THE ANTIWAR MOVEMENT?

A I DON'T BELIEVE IT DID.

Q WHY DID THE FBI FIND IT NECESSARY, IF YOU KNOW, TO USE THIS PARTICULAR DEVICE, WHICH DOES NOT IDENTIFY THE FBI, AS ITS AUTHOR?

A ANOTHER MEASURE TO TRY TO ALERT STUDENTS ON THE CAMPUS.

(PAUSE)

Q MR. BRENNAN, I HAVE PLACED THREE DOCUMENTS BEFORE YOU, PLAINTIFFS' EXHIBITS 21, 22 AND 23. I'M SORRY -- 20, 21 AND 22.

A YES.

Q COULD YOU TAKE A MINUTE AND LOOK AT THOSE?

(PAUSE)

HAVE YOU HAD A CHANCE TO LOOK AT THOSE?

A YES, MA'AM.

Q AND DO ALL THREE OF THESE DOCUMENTS APPEAR TO RELATE TO THE SAME SUBJECT MATTER?

A YES, THEY DO.

Q COULD YOU DESCRIBE WHAT THAT SUBJECT MATTER IS?

A APPARENTLY, IT INVOLVED JULIUS HOBSON AND THE BLACK UNITED FRONT AND IT INVOLVED THIS ISSUE OF WHETHER OR NOT JULIOUS HOBSON SHOULD BE DENOUNCED AS AN UNCLE TOM FOR ASKING FOR COMPENSATION FROM WHITE GROUPS WHO WERE COMING TO WASHINGTON TO DEMONSTRATE.

Q DO YOU HAVE ANY PRESENT RECOLLECTION OF THIS EPISODE?

A NO, I DO NOT.

Q DO YOU KNOW WHETHER OR NOT THE PROJECT OUTLINED IN THESE DOCUMENTS WOULD HAVE NORMALLY GONE OVER YOUR DESK AT THE TIME?

REFER, IF YOU NEED TO, TO THE DATES ON THESE DOCUMENTS.

A I DON'T BELIEVE THEY WOULD.

Q WHY NOT?

A AT THIS TIME I DON'T THINK THESE MATTERS WERE BEING HANDLED IN THE INTERNAL SECURITY SECTION, AND I WAS SECTION CHIEF OF THAT SECTION AT THAT TIME.

Q THESE DOCUMENTS DO, THOUGH, DESCRIBE A COINTELPRO PROJECT; DO THEY NOT?

A YES, THEY DO.

Q IS IT A DIFFERENT COINTELPRO FROM COINTELPRO NEW LEFT?

A YES, IT IS.

Q WHICH COINTELPRO IS IT?

A IT'S COINTELPRO BLACK NATIONALIST HATE GROUPS.

Q AND WAS THAT A COINTELPRO THAT YOU AT THAT TIME DIDN'T HAVE PRIMARY RESPONSIBILITY FOR?

A THAT'S RIGHT.

Q YOU HAVE INDICATED, THOUGH, THAT THE NEW MOBILIZATION COMMITTEE WAS A GROUP THAT WAS A TARGET OF COINTELPRO NEW LEFT; IS THAT CORRECT?

A YES.

Q AND THESE DOCUMENTS DO REFER TO THAT ORGANIZATION; DO THEY NOT?

A YES.

Q NOW, WOULD THE COINTELPRO BLACK NATIONALIST PERSON HAVE COORDINATED THIS EFFORT WITH THE COINTELPRO NEW LEFT PERSON, SINCE IT INVOLVED A GROUP THAT WAS A TARGET OF THE NEW LEFT PROGRAM?

A I THINK IT PROBABLY WOULD.

Q AND IF IT DID INVOLVE COINTELPRO NEW LEFT GROUPS IT WOULD HAVE GONE THROUGH YOUR OFFICE; WOULD IT NOT?

A NOT NECESSARILY. THE SUPERVISORS COULD HAVE GOTTEN TOGETHER.

Q THEY WOULDN'T HAVE NEEDED YOUR APPROVAL?

A NO.

Q NOW, DIRECTING YOUR ATTENTION TO EXHIBIT 20, MR. BRENNAN, THIS IS A MEMORANDUM FROM THE WASHINGTON FIELD OFFICE TO THE DIRECTOR OF THE FBI; IS IT NOT?

A YES, MA'AM.

Q NOW, IF A MEMORANDUM IS SENT TO THE DIRECTOR DOES IT GO THROUGH YOUR OFFICE, IF IT INVOLVES THE COINTELPRO PROJECT REGARDING THE NEW LEFT?

THE COURT: I THINK YOU BETTER INDICATE WHAT PERIOD OF TIME YOU'RE TALKING ABOUT. HE'S INDICATED HE'S IN SEVERAL DIFFERENT OFFICES.

MS. PILSBURY: IN 1969, MR. BRENNAN.

THE WITNESS: NOT ALL OF THEM.

BY MS. PILSBURY:

Q IS THERE ANY ROUTINE AS TO WHICH ONES WOULD AND WHICH ONES WOULDN'T?

A I BELIEVE THAT IT WAS POSSIBLE FOR, AT THAT TIME, FOR COINTELPRO MATTERS SUCH AS DESCRIBED IN THESE COMMUNICATIONS TO GO DIRECTLY FROM MR. MOORE'S SECTION TO THE ASSISTANT DIRECTOR.

Q I'M DIRECTING YOUR ATTENTION, MR. BRENNAN, TO A COINTELPRO PROJECT THAT INVOLVED BOTH THE NEW LEFT AND THE BLACK NATIONALIST GROUPS.

A ORDINARILY, THAT WOULD GO THROUGH BOTH SECTIONS PRIOR TO GOING TO THE ASSISTANT DIRECTOR.

Q AND WOULD IT REQUIRE APPROVAL FROM HEADQUARTERS BEFORE IT WAS IMPLEMENTED?

A YES, IT WOULD.

Q NOW, HAVE YOU HAD A CHANCE TO FAMILIARIZE YOURSELF

MR. WHITE: THAT IS NOT CORRECT, YOUR HONOR. THE QUESTIONS DID NOT GO TO THE QUESTION OF WHETHER HE SAW THOSE DOCUMENTS.

THE COURT: THE QUESTION WAS WHETHER THIS REFRESHES HIS RECOLLECTION.

OBJECTION OVERRULED.

THE WITNESS: WHAT IS YOUR QUESTION, AGAIN?

BY MS. PILSBURY:

Q MY QUESTION IS KIND OF A LONG ONE, MR. BRENNAN.

IT WAS WHETHER YOU WOULD READ THE FIRST PAGE OF PLAINTIFFS' EXHIBIT 26.

A I READ IT.

Q AND SEE IF IT REFRESHES YOUR MEMORY AS TO THE PURPOSE OF THE COINTELPRO PROJECTS REGARDING MR. HOBSON, THE BLACK UNITED FRONT AND THE NEW MOBE, THAT WAS DESCRIBED IN THE THREE EXHIBITS THAT I SHOWED YOU BEFORE THIS.

A NO, IT DOES NOT.

Q HAVING READ THE DOCUMENTS DO YOU NOW KNOW WHAT THE PURPOSE OF THOSE PROJECTS WAS?

A BASICALLY, TO CAUSE A SPLIT BETWEEN THE BLACK MILITANTS AND THE NEW LEFT.

Q ALL RIGHT. THANK YOU, MR. BRENNAN.

NOW, WHY WOULD THE FBI WANT TO CAUSE A SPLIT BETWEEN THE BLACK MILITANTS AND THE NEW LEFT?

A IT'S MY RECOLLECTION THAT THE FBI SAW A PROBLEM

Brennan on reason to disrupt groups—
JA 1174 H—

IN THE JOINT ACTIONS OF VARIOUS ORGANIZATIONS AND GROUPS OF INDIVIDUALS, SOME OF WHOM WERE MILITANT AND ADVOCATING VIOLENCE AND MILITANCY.

AND THE FEELING WAS IF WE COULD DISRUPT THEM AND KEEP THEM FROM UNITING TOGETHER THAT IT WOULD SERVE TO MITIGATE THE PROBLEM WE SAW FOR POTENTIAL VIOLENCE.

Q AND WAS THE BLACK UNITED FRONT SUCH AN ORGANIZATION?

A SUCH AN ORGANIZATION AS WHAT?

Q ONE THAT YOU FELT WAS PRONE TO VIOLENCE OR -- I'M SORRY. I DON'T RECALL THE EXACT PHRASE YOU USED.

A ANY OF THE GROUPS THAT WE HAD UNDER INVESTIGATION AT THAT TIME, WE WERE ATTEMPTING TO DISCOURAGE THEM FROM FORMING A UNITED FRONT.

Q AND WAS THE BLACK UNITED FRONT ONE OF THE GROUPS YOU HAD UNDER INVESTIGATION?

A IT BELIEVE IT WAS.

Q AND DID YOU BELIEVE THAT THE BLACK UNITED FRONT WAS PRONE TO VIOLENCE?

A I DON'T RECALL THE BASIC NATURE OR CHARACTERISTICS OF THE BLACK UNITED FRONT AT THIS TIME.

Q DO YOU RECALL WHETHER OR NOT YOU HAD A BELIEF AS TO WHETHER THE NEW MOBILIZATION COMMITTEE WAS PRONE TO VIOLENCE?

A BASIC PROBLEM -- NO.

Q NO, YOU DON'T RECALL OR NO, IT WASN'T?

Brennan on
real reason
th disruption -
not violence
but CP influence

JA 1174 J

A NO, I DON'T RECALL THAT I WAS TOO CONCERNED ABOUT THE PROPENSITY FOR VIOLENCE WITH THE NEW MOBE COMMITTEE ITSELF.

Q WHY THEN WERE YOU CONCERNED ABOUT THE NEW MOBE COMMITTEE AND THE BLACK UNITED FRONT GETTING TOGETHER?

A BECAUSE OF THE COMMUNIST INFILTRATION INTO THE NEW MOBE COMMITTEE AND THE PROPENSITY FOR COMMUNISTS TO BE ABLE TO UNITE WITH OTHER GROUPS AND MANIPULATE THOSE GROUPS FOR THEIR PURPOSES.

Q WHY DID THIS CONCERN YOU, EVEN THOUGH IT IS NOT ILLEGAL FOR A PERSON TO BE A MEMBER OF THE COMMUNIST PARTY?

A BECAUSE INCREASINGLY THE DEMONSTRATIONS WHICH WERE ORGANIZED TO A GREAT EXTENT BY THE NEW MOBE AND BY THE STUDENT MOBILIZATION COMMITTEE WERE PROVIDING THE OPPORTUNITY FOR OUTBREAKS OF VIOLENCE, WHICH WERE VERY DISRUPTIVE, NOT ONLY IN WASHINGTON, BUT ALSO IN OTHER AREAS OF THE COUNTRY.

Q AND COULD YOU EXPLAIN HOW THE NEW MOBE WAS PROVIDING OPPORTUNITIES FOR OUTBREAKS OF VIOLENCE?

A THE NEW MOBE WAS THE KEY GROUP IN ORGANIZING THE ANTIWAR DEMONSTRATIONS.

Q AND SO IS IT YOUR TESTIMONY THAT BY ORGANIZING AN ANTIWAR DEMONSTRATION THE NEW MOBE WAS CREATING AN OPPORTUNITY FOR AN OUTBREAK OF VIOLENCE?

A INDIRECTLY, YES.

Q AND THEREFORE THEY SHOULD BE PREVENTED FROM EVEN

A NO.

Q IS IT TODAY?

A NO.

Q IS IT AGAINST THE LAW TODAY, OR AT THAT TIME, FOR A PERSON TO BELIEVE THAT SOCIALISM IS A PREFERABLE ECONOMIC SYSTEM TO CAPITALISM?

A NO.

MS. PILSBURY: YOUR HONOR, I'M GOING TO SHOW THE WITNESS A COPY OF A DOCUMENT IDENTIFIED AS PLAINTIFFS' EXHIBIT 31-A.

THE COURT: IS IT IN EVIDENCE?

MS. PILSBURY: NO, IT'S NOT, YOUR HONOR.

MR. WHITE: YOUR HONOR, BEFORE THE INQUIRY BEGINS ON THIS --

THE COURT: UP HERE.

(WHEREUPON, THE WITNESS STEPS DOWN FROM THE STAND, COUNSEL FOR ALL PARTIES APPROACH THE BENCH, AND CONFER WITH THE COURT, AS FOLLOWS:)

MR. WHITE: THIS DOCUMENT IS THE SUBJECT OF A MOTION TO STRIKE PREVIOUSLY FILED, BEFORE TRIAL.

THE COURT: AND I DIDN'T RULE ON IT?

MR. WHITE: NO, THIS BEING AN ITEM, ALTHOUGH PUBLISHED IN THE CHURCH COMMITTEE REPORT IN 1976, WAS NOT ALLUDED TO BY THE PLAINTIFFS UNTIL OCTOBER 22D OF THIS YEAR, WHEN WE FILED THE PRETRIAL BRIEF.

THE COURT: WHEN ARE THEY SUPPOSED TO HAVE ALLUDED TO THE DOCUMENT?

MR. WHITE: WHEN I INQUIRED OF THEM AS TO WHAT ACTIONS THEY WERE COMPLAINING OF AND WHAT DEFENDANTS ARE RESPONSIBLE FOR -- I DID THAT BY INTERROGATORIES OF JUNE OF THIS YEAR.

THE COURT: IF THEY DID IDENTIFY IT IN THE PRETRIAL BRIEF THAT'S TIME ENOUGH BY MY RULES. YOU CAN CROSS EXAMINE ON IT.

AND BY ANYONE ELSE'S ON IT.

WHAT IS THE OTHER OBJECTION?

MR. WHITE: IN ADDITION, I SIMPLY MAKE THE PROFFER THAT IF ASKED, MR. BRENNAN'S TESTIMONY ON HIS PERSONAL KNOWLEDGE WILL BE THAT HE DID NOT SEE IT AT THE TIME.

THE COURT: WAS IT THROUGH HIS OFFICE? DID IT GO THROUGH ON HIS WATCH?

MR. WHITE: HE WAS -- AT THIS TIME HE WAS AN EMPLOYEE OF THE FBI HEADQUARTERS, AND THIS WOULD HAVE GONE THROUGH THE DIVISION HE WAS IN. HE WAS SECTION CHIEF OF THE DOMESTIC INTELLIGENCE DIVISION.

HIS TESTIMONY WOULD BE THAT HE DID NOT PERSONALLY SEE IT.

THE COURT: WELL, IT WASN'T SOMEBODY IN HIS -- ON HIS STAFF DID. I'M ASKING THIS QUESTION.

MR. WHITE: THAT'S PROBABLE.

THE COURT: OKAY.

THE JURY'S GOT TO DRAW SOME INFERENCE WHETHER HE'S RESPONSIBLE FOR IT OR ISN'T.

OBJECTION IS OVERRULED.

(WHEREUPON, THE PROCEEDINGS HAD AT THE BENCH WERE CONCLUDED, THE WITNESS RESUMED THE WITNESS STAND, AND THE TRIAL RESUMED, AS FOLLOWS:)

BY MS. PILSBURY:

Q MR. BRENNAN, HAVE YOU HAD A CHANCE TO REVIEW PLAINTIFFS' EXHIBIT 31-A?

A NO.

IF YOU'LL GIVE ME A MOMENT.

Q PLEASE TAKE YOUR TIME.

THE COURT: WHILE HE'S DOING THAT, COUNSEL PLEASE COME BACK AGAIN.

(WHEREUPON, THE WITNESS STEPPED DOWN FROM THE WITNESS STAND, COUNSEL FOR ALL PARTIES APPROACHED THE BENCH AND CONFERRED WITH THE COURT, AS FOLLOWS:)

THE COURT: THERE WILL BE NO PUBLICATION OF THIS TO THE JURY AT THIS TIME.

MR. WHITE: YES, YOUR HONOR.

(WHEREUPON, THE PROCEEDINGS HAD AT THE BENCH WERE CONCLUDED, THE WITNESS RESUMED THE WITNESS STAND, AND THE TRIAL CONTINUED, AS FOLLOWS:)

BY MS. PILSBURY:

Q MR. BRENNAN, HAVE YOU HAD A CHANCE TO BECOME FAMILIAR WITH THAT DOCUMENT?

A YES.

Q COULD YOU JUST DESCRIBE IN GENERAL TERMS WHAT IT IS?

A IT'S A LETTER FROM NEW YORK TO FBI HEADQUARTERS IN CONNECTION WITH THE SOCIALIST WORKERS PARTY DISRUPTION PROGRAM IN WHICH NEW YORK IS ADVISED -- FURNISHING A COPY OF LEAFLET MAILED -- WHICH THEY HAD MAILED TO THE NEW LEFT AND RELATED GROUPS UNDER THE COUNTERINTELLIGENCE PROGRAM IN ORDER TO CAUSE DISRUPTION.

Q CAUSE DISRUPTION IN WHICH GROUPS?

A PRIMARILY THE NEW MOBILIZATION COMMITTEE TO END THE WAR IN VIETNAM.

Q AND WAS THIS, AS YOU RECALL, GENERALLY IN KEEPING WITH BUREAU POLICY AT THAT TIME?

A YES.

Q AND WOULD THIS HAVE COME THROUGH YOUR OFFICE?

A IT WOULD HAVE COME INTO THE DOMESTIC INTELLIGENCE DIVISION.

Q AND IN 1970 WERE YOU CHIEF OF THE DOMESTIC INTELLIGENCE DIVISION?

A YES.

MS. PILSBURY: I MOVE THIS INTO EVIDENCE, YOUR HONOR, PLAINTIFFS' EXHIBIT 31-A.

ARE YOU FAMILIAR WITH THE TERM "SECURITY INDEX"?

A YES, I AM.

Q AND WAS THAT SOMETHING YOU HAD ANY RESPONSIBILITY FOR WHEN YOU WERE IN THE DOMESTIC INTELLIGENCE DIVISION?

A YES.

Q WHAT WAS YOUR RESPONSIBILITY?

A THE SECURITY INDEX SYSTEM WAS MAINTAINED BY THE INTERNAL SECURITY SECTION.

Q FOR HOW LONG WAS THE SECURITY INDEX IN EXISTENCE?

A I BELIEVE IT DATES BACK TO WORLD WAR TWO.

Q IS IT STILL IN EXISTENCE?

A I HAVE NO IDEA.

Q WAS IT WHEN YOU LEFT THE BUREAU IN 1974?

A I HAVE NO IDEA OF THAT EITHER.

Q I'M SORRY.

WAS IT IN EXISTENCE WHEN YOU LEFT THE DOMESTIC INTELLIGENCE DIVISION IN -- I BELIEVE IT WAS IN 1971?

A I BELIEVE IT WAS.

Q DID THE SECURITY INDEX -- WAS IT ALWAYS KNOWN BY THAT NAME?

A I BELIEVE SO.

Q ARE YOU FAMILIAR WITH THE TERM "ADMINISTRATIVE INDEX"?

A I DON'T REMEMBER THAT.

Q ARE YOU FAMILIAR WITH TERM "AGITATOR INDEX"?

A YES.

Q "RABBLE ROUSER INDEX"?

A YES.

Q ARE THESE ALL INDEXES THAT WERE MAINTAINED WITHIN THE DOMESTIC INTELLIGENCE DIVISION?

A I BELIEVE SO.

Q WHAT'S THE DIFFERENCE BETWEEN THE THREE INDEXES THAT YOU HAVE INDICATED FAMILIARITY WITH?

A I BELIEVE THE AGITATOR INDEX -- I MAY GET THESE BACKWARDS.

THE DEPARTMENT OF JUSTICE AND THE FBI WERE CONCERNED ABOUT THE NUMBER OF RIOTS THAT WERE TAKING PLACE AROUND THE COUNTRY, AND I BELIEVE THERE WAS A CONFERENCE HELD AT WHICH THEY DECIDED IT WOULD BE ADVISABLE TO ESTABLISH AN INDEX OF PERSONS WHO HAD ENGAGED IN THE RIOTS OR WHO ADVOCATED RIOTING.

IF I RECALL CORRECTLY, I BELIEVE IT STARTED OUT AS A RABBLE ROUSER INDEX, AND I BELIEVE SUBSEQUENTLY SOMEBODY FOUND THE NAME OF THAT OBJECTIONABLE, AND I BELIEVE THEY CHANGED THAT TO THE AGITATOR INDEX.

Q SO VERY POSSIBLY THOSE TWO INDEXES ARE THE SAME.

A I THINK SO.

Q JUST AT DIFFERENT TIMES.

A YES.

Q AND THE CRITERIA FOR APPEARING ON THAT INDEX

WAS THAT THE PERSON HAD ENGAGED IN A RIOT OR ADVOCATED RIOTING?

A I DON'T RECALL THE SPECIFIC CRITERIA.

THOSE INDEXES, IF I RECALL CORRECTLY, WERE NOT MAINTAINED UNDER MY SUPERVISION.

Q WAS THE SECURITY INDEX MAINTAINED UNDER YOUR SUPERVISION?

A YES.

Q WERE THESE INDEXES LISTS OF PERSONS' NAMES?

A YES.

Q WHAT WERE THE CRITERIA, CRITERION, FOR A PERSON TO BE LISTED ON A SECURITY INDEX?

A BASICALLY, IT INVOLVED INDIVIDUALS WHO WERE -- I BELIEVE WHO WERE THEN CURRENTLY OR WHO IN THE PAST HAD BEEN ACTIVE MEMBERS OF SUBVERSIVE ORGANIZATIONS.

Q SAY A PERSON HAD BEEN A MEMBER OF -- COULD YOU GIVE US AN EXAMPLE OF A SUBVERSIVE ORGANIZATION?

A WELL, FOR EXAMPLE -- I THINK YOU HAD A LONG LIST OF THEM -- ORGANIZATIONS WHICH HAVE BEEN DESIGNATED BY THE ATTORNEY GENERAL.

Q AND THAT WAS THE LIST YOU USED BASICALLY?

A I DON'T REMEMBER WHETHER IT WAS JUST BASICALLY THE ATTORNEY GENERAL'S LIST OR NOT, BUT I BELIEVE THAT INVOLVED AN AWFUL LOT OF THEM.

Q WOULD MERE MEMBERSHIP IN AN ORGANIZATION BE

ENOUGH TO QUALIFY SOMEONE TO BE ON THE SECURITY INDEX?

A I REALLY DON'T REMEMBER THE SPECIFIC CRITERIA.

THERE WAS AN AGREEMENT WHICH EXISTED BETWEEN THE FBI AND THE DEPARTMENT OF JUSTICE WHEREBY IF THE INDIVIDUAL FIT CERTAIN CRITERIA THE FBI WOULD FORWARD THE NAME TO THE DEPARTMENT OF JUSTICE FOR INCLUSION ON THE SECURITY INDEX.

BUT AS TO THE SPECIFICS OF THE CRITERIA, I FORGET IT RIGHT NOW.

Q OKAY.

I'M GOING TO SHOW YOU A DOCUMENT MARKED FOR IDENTIFICATION AS PLAINTIFFS' EXHIBIT 80, MR. BRENNAN.

WOULD YOU TAKE A MINUTE AND REVIEW THAT AND SEE IF IT REFRESHES YOUR MEMORY AS TO THE CRITERIA USED TO LIST SOMEBODY ON THE SECURITY INDEX?

(PAUSE)

THE COURT: EIGHTY IS IN EVIDENCE.

MS. PILSBURY: YES.

(PAUSE)

THE WITNESS: YES.

BY MS. PILSBURY:

Q NOW, MR. BRENNAN, WITH YOUR MEMORY REFRESHED, DOES THE INDEX CONTAIN THREE CATEGORIES?

A ARE YOU TALKING ABOUT CATEGORIES OR PRIORITIES?

Q WELL, PRIORITIES, THEN.

A YES.

Q AND IS MERE MEMBERSHIP SUFFICIENT TO QUALIFY A PERSON TO BE LISTED ON THE INDEX UNDER PRIORITY THREE?

A PRIORITY THREE WAS MADE UP OF RANK AND FILE MEMBERS.

Q SO, DO YOU WANT ME TO ASK THE QUESTION AGAIN?

WOULD MEMBERSHIP ALONE BE ENOUGH TO QUALIFY A PERSON TO BE ON THE SECURITY INDEX UNDER PRIORITY THREE?

A YES.

Q AND THEN, WHAT WAS THE CRITERIA FOR PRIORITY TWO?

A SECOND LEVEL LEADERSHIP IN AN ORGANIZATION.

Q AGAIN, MEMBERSHIP PLUS LEADERSHIP IN THAT ORGANIZATION WOULD BE ENOUGH.

A SECOND LEVEL LEADERSHIP CAPACITY.

Q AND WHAT WAS THE CRITERIA FOR PRIORITY ONE?

A BASICALLY, TOP LEADERS.

Q ANY OTHER CRITERIA?

A TOP NATIONAL AND STATE LEADERSHIP OF BASIC SUBVERSIVE ORGANIZATIONS, LEADERS OF ANARCHISTIC GROUPS, INDIVIDUALS WHO HAVE SHOWN THE GREATEST PROPENSITY FOR VIOLENCE, AS WELL AS THOSE WHO HAVE SPECIAL TRAINING IN SABOTAGE, ESPIONAGE, GUERILLA WARFARE, ET CETERA.

Q WHAT YOU HAVE JUST READ, MR. BRENNAN, IS A DIRECT QUOTE, IS IT NOT, FROM THE DOCUMENT BEFORE YOU?

A YES. FROM THE DOCUMENT, YES.

Q NOW, MY QUESTION, MR. BRENNAN, IS THIS.

HOW WOULD YOU OBTAIN YOUR INFORMATION TO DETERMINE WHETHER OR NOT AN INDIVIDUAL WAS, FOR INSTANCE, ONE WHO HAD A PROPENSITY FOR VIOLENCE OR SPECIAL TRAINING IN SABOTAGE, ESPIONAGE, GUERILLA WARFARE, ET CETERA?

A AGAIN, THROUGH INVESTIGATION.

Q THROUGH YOUR DOMESTIC INTELLIGENCE INVESTIGATIONS?

A YES.

Q WOULD YOU EVER INTERVIEW THE PEOPLE THEMSELVES THAT YOU WERE THINKING OF PLACING ON THE SECURITY INDEX?

A YES.

Q TO CHECK AND SEE IF YOUR INFORMATION WAS CORRECT?

A YES.

Q WOULD YOU TELL THEM THAT YOU BELIEVED THAT THEY HAD SPECIAL TRAINING IN SABOTAGE AND ESPIONAGE AND ASK WHETHER OR NOT THAT WAS CORRECT?

A NO.

WE WOULD ASK THEM WHETHER THEY HAD -- WE WOULDN'T TELL THEM THEY HAD. WE'D ASK THEM WHETHER THEY HAD.

Q WOULD YOU TELL THEM ABOUT THE SECURITY INDEX?

A NO.

Q THAT WAS NOT A PUBLIC PROGRAM; WAS IT NOT?

A NO.

Q SO IF A PERSON WAS LISTED ON THE SECURITY INDEX INCORRECTLY, THAT PERSON WOULDN'T HAVE ANY WAY OF KNOWING

ABOUT IT; WOULD HE?

A NO.

Q WAS COINTELPRO NEW LEFT A PUBLIC PROGRAM?

A NO, IT WAS NOT.

Q AND IT WOULDN'T BE THE SORT OF THING THAT THE FBI WOULD MENTION ON, FOR INSTANCE, TOURS THAT THEY WOULD GIVE AT THE BUILDING?

A NO, THEY WOULD NOT BE.

Q DO YOU RECALL WHEN THE PUBLIC WAS TOLD ABOUT THE COINTELPRO PROGRAMS BY THE FBI?

A PROBABLY THE PUBLIC LEARNED OF IT THROUGH THE BURGLARY THAT WAS CONDUCTED. WHEN OUR RESIDENT AGENCY IN MEDIA, PENNSYLVANIA, WAS BURGLARIZED.

Q MR. BRENNAN, THAT WASN'T MY QUESTION.

DID THERE COME A TIME WHEN THE FBI PUBLICLY ANNOUNCED THE EXISTENCE OF THE COINTELPRO PROGRAMS?

WAS THERE A PRESS CONFERENCE AT WHICH THEY WERE ANNOUNCED, DO YOU RECALL?

A NOT THAT I RECALL.

Q DID THERE COME A TIME WHEN THE FBI ENDED THE COINTEL PROGRAMS?

A YES.

Q DO YOU RECALL WHEN THAT WAS?

A THE SPECIFIC DATE, I DON'T RECALL.

Q WAS IT WHILE YOU WERE STILL AT THE FBI?

A I DON'T RECALL ANY SUCH INTEREST, NO.

Q NOW, YOU INDICATED, I BELIEVE, EARLIER THAT PART OF THE REASON FOR THE COINTELPRO PROGRAMS WAS TO DISRUPT GROUPS THAT WERE INIMICAL TO THE INTERESTS OF THE UNITED STATES.

AND I BELIEVE YOU INDICATED THAT THE INTEREST OF THE UNITED STATES WOULD BE DETERMINED BY PEOPLE AT THE FBI.

WOULD THIS ALSO APPLY TO THE AGENTS IN THE FIELD WHO WERE CHARGED WITH DEVELOPING IMAGINATIVE COINTELPRO ACTIVITIES?

A YES, I WOULD SAY SO.

Q IN OTHER WORDS, THEY WOULD BE FREE TO DETERMINE WHAT THE INTERESTS OF THE UNITED STATES WERE?

A IN A GENERAL SENSE, YES.

MS. PILSBURY: THANK YOU, YOUR HONOR.

I HAVE NO FURTHER QUESTIONS ON DIRECT.

THE COURT: MR. WHITE.

DO YOU ALL WANT TO TAKE A STRETCH FOR A MOMENT, WHILE MR. WHITE IS GATHERING HIS MATERIAL? PLEASE DO.

MR. BRENNAN, IF YOU WOULD LIKE TO STRETCH.

THE WITNESS: YOUR HONOR, IF I COULD.

MR. BARCLAY: YOUR HONOR, COULD I BE EXCUSED?

MS. BONN IS HERE.

THE COURT: YES.

CROSS EXAMINATION

HE WOULD HAVE TO THEN ALSO, IN TURN, PICK A UNIT CHIEF UP WHO WOULD THEN SERVE AS AN ACTING CHIEF IN THE ABSENCE OF BOTH OF US.

Q NOW, WAS THERE ANY PARTICULAR PERSON -- WELL, WHAT WERE THE NAMES OF THE NUMBER ONE MAN THAT YOU HAD DURING THE PERIOD YOU WERE SECTION CHIEF?

A I HAD SEVERAL. ONE WAS JACK HERINGTON. ANOTHER ONE WAS CONRAD THOMPSON.

AND I THINK IT WAS MOSTLY THOSE TWO DURING THE TIME I WAS SECTION CHIEF.

Q DURING THE TIME YOU WERE SECTION CHIEF WAS THERE A STANDARD PROCEDURE IN THE FEDERAL BUREAU OF INVESTIGATION REGARDING THE NAMES THAT WOULD APPEAR ON MEMORANDA INTERNAL TO FBI HEADQUARTERS?

A YES.

INTERNAL MEMORANDA WERE PREPARED FOR ROUTING PURPOSES. THERE WERE SEVEN SECTIONS INSIDE THE DOMESTIC INTELLIGENCE DIVISION. THUS, THERE WERE SEVEN SECTION CHIEFS.

THE CUSTOM HAD BEEN ESTABLISHED YEARS BEFORE THAT ANY MEMORANDA WHICH WOULD LEAVE A PARTICULAR SECTION WOULD GO BEARING THE NAME OF THE SECTION CHIEF TO BE FORWARDED TO THE INDIVIDUAL WHO WAS THE ASSISTANT DIRECTOR OF THE DIVISION.

SO ALL MEMORANDA WHICH WAS PREPARED IN MY SECTION, WHICH WAS SUPPOSED TO LEAVE MY SECTION, HAD TO GO ADDRESSED

FROM C. B. BRENNAN TO W. C. SULLIVAN.

THE COURT: EXCUSE THE JURY.

MARSHAL.

COUNSEL COME TO THE BENCH.

(WHEREUPON, THE JURY RETIRES FROM THE COURTROOM, THE WITNESS STEPS DOWN FROM THE WITNESS STAND, COUNSEL FOR ALL PARTIES APPROACH THE BENCH AND CONFER WITH THE COURT, AS FOLLOWS:)

THE COURT: I DON'T TO MAKE AN ISSUE ABOUT THIS AND I KNOW HOW PEOPLE ARE INVOLVED, FEEL STRONGLY, BUT I THINK I JUST NOTICED MR. JONES MAKING GESTURES TO THE WITNESS, AND I'M SURE IT'S A REFLEX, AND I'M NOT MAKING AN ISSUE OUT OF IT.

I ALSO THOUGHT I NOTICED SOME KIND OF EYE CONTACT SIGNAL WITH YOUR COLLEAGUE AT COUNSEL TABLE A FEW HOURS AGO.

I DIDN'T SAY ANYTHING ABOUT IT. I THOUGHT IT WAS ACCIDENTAL.

LET ME BE EXCUSED A MINUTE.

YOU HAVE A CONFERENCE WITH HIM ABOUT THAT.

MR. WHITE: YOUR HONOR, I WOULD LIKE TO PLACE THIS ON THE RECORD.

I NOTICED FREQUENTLY DURING MR. JONES'S AND MR. BRENNAN'S TESTIMONY THAT THEY WOULD MAKE EYE CONTACT WITH ME DURING THE COURSE OF THEIR TESTIMONY, AND I CAN ASSURE YOU --

I'LL TAKE A TWO-MINUTE RECESS.

(WHEREUPON, THE PROCEEDINGS HAD AT THE BENCH WERE CONCLUDED AND A BRIEF RECESS WAS TAKEN.)

THE COURT: YOU CAN BRING BACK THE JURY.

(WHEREUPON, THE JURY ENTERS THE COURTROOM AND TAKES THEIR SEATS IN THE JURY BOX.)

THE COURT: YOU MAY CONTINUE, MR. WHITE.

BY MR. WHITE:

Q MR. BRENNAN, REGARDING THE TRANSMISSION OF DOCUMENTS, WOULD DOCUMENTS THAT WERE TRANSMITTED WITHIN HEADQUARTERS FROM YOUR SECTION TO THE ASSISTANT DIRECTOR BEAR YOUR NAME DURING THE OCCASION OF YOUR ABSENCE?

A YES.

Q WOULD THERE BE A FILE KEPT, OR SOME OTHER REPOSITARY, TO ADVISE YOU OF THE DOCUMENTS THAT HAD BEEN TRANSMITTED DURING THE DAYS OF YOUR ABSENCE?

A NO.

Q DID YOUR NUMBER ONE MAN, OR WHOEVER WAS SITTING IN FOR YOU, HAVE FULL AUTHORITY TO ACT AS THE SECTION CHIEF DURING YOUR ABSENCE?

A YES, HE DID.

Q MR. BRENNAN, I PLACE BEFORE YOU EXHIBIT NUMBER THREE.

WOULD YOU DESCRIBE BRIEFLY FOR THE JURY THE NATURE OF EXHIBIT NUMBER THREE?

AND ULTIMATELY, FROM HIS OFFICE IT GOES TO MR. HOOVER'S OFFICE, AND HE DESIGNATES HIS APPROVAL BY MARKING, "OKAY, H."

Q SO THIS DOCUMENT WAS APPROVED BY THE DIRECTOR AT THAT TIME?

A YES.

Q MR. BRENNAN, WAS THIS THE DOCUMENT WHICH CREATED THE COUNTERINTELLIGENCE PROGRAM NEW LEFT, EXHIBIT NUMBER THREE?

A YES.

Q WHAT HAD OCCURRED, OR WAS OCCURRING, WHICH MADE THE FBI DEEM THIS PROGRAM TO BE APPROPRIATE AND NECESSARY?

A WELL, I THINK YOU WOULD HAVE TO LOOK AT THE CLIMATE OF THE TIME. THE COUNTRY WAS CONCERNED ABOUT THE VIOLENCE AND THE DISORDER.

FOR EXAMPLE, IN THE SCHOOL YEAR 1968 AND 1969 THERE WERE SOMETHING LIKE OVER EIGHT HUNDRED DEMONSTRATIONS ON TWO HUNDRED AND TWENTY-FIVE COLLEGE CAMPUSES.

TWO HUNDRED BUILDINGS HAD BEEN SEIZED. THERE WERE SOMETHING LIKE SIXTY ARSONS AND/OR BOMBINGS ON COLLEGE CAMPUSES.

THERE WAS A TOTAL DESTRUCTION OF CAMPUS FACILITIES AMOUNTING TO MORE THAN THREE MILLION DOLLARS. AND ALL OF THIS CONSTITUTED AN ESCALATION OF WHAT STARTED OUT REALLY IN THE FORM OF LEGITIMATE DISSENT AND PASSIVE RESISTANCE, FOCALIZED TO A GREAT EXTENT AROUND THE STUDENTS

FOR A DEMOCRATIC SOCIETY.

THE ORIGINAL FORMS OF PROTEST INVOLVED THEIR DISAGREEMENT WITH THE WARTIME POLICIES OF THE UNITED STATES, WHICH, OF COURSE, WAS LEGITIMATE DISSENT.

BUT THEN THEY GOT INTO WHAT THEY CALLED PASSIVE RESISTANCE, WHERE THEY WOULD LIE DOWN IN FRONT OF TROOP TRAINS AND SO FORTH AND SO ON.

AND, THEN, YOU SAW THE VIOLENT OUTBREAK, THE ASSAULT ON THE PENTAGON IN OCTOBER OF 1967, WHICH WAS REALLY A FORM OF VIOLENT EFFORT TO BREAK INTO THE PENTAGON.

AND AT THE END OF THAT YEAR ONE OF REVOLUTIONARY LEADERS OF THE SDS, MARK RUDD, INDICATED THAT PASSIVE RESISTANCE AND LEGITIMATE PROTEST AND DISSENT WAS NOT ENOUGH AND THAT MORE VIOLENT ACTIVITY HAD TO BE BROUGHT ABOUT TO SMASH THE SYSTEM AND TO STOP THE WAR IN VIETNAM.

THIS WAS ACCOMPANIED BY REALLY THE OUTGROWTH OF WHAT WAS THEN KNOWN AS AN UNDERGROUND PRESS.

THE UNDERGROUND PRESS INVOLVED NUMEROUS NEWSPAPERS ON COLLEGE CAMPUSES, WHEN THEY BEGAN TO TELL STUDENTS HOW TO DO THEIR OWN THING TO SMASH THE SYSTEM AND TO BRING THE SYSTEM TO A HALT.

THEY WOULD ACTUALLY HAVE IN THESE PUBLICATIONS ILLUSTRATIONS --

MS. PILSBURY: I'M GOING TO OBJECT AT THIS POINT. HE'S TESTIFYING TO EVENTS THAT OCCURRED AND TO HIS

OPINION AND BY HIS TESTIMONY AFTER THE DATES OF THE MEMO THAT THE QUESTION WAS ASKING HIM ABOUT.

THE COURT: THE OBJECTION IS OVERRULED.

BY MR. WHITE:

Q MR. BRENNAN, WHEN DID THE ASSAULT ON THE PENTAGON OCCUR THAT YOU TESTIFIED ABOUT?

A IN OCTOBER OF 1967.

Q AND DO YOU HAVE ANY PERSONAL KNOWLEDGE AS TO EVENTS ON THAT DAY?

A YES.

I WAS ON THE SCENE AT THAT TIME.

I WAS ON THE -- I THINK THEY CALL IT THE BALLUSTRADE -- JUST OUTSIDE THE DOORS OF THE PENTAGON -- AND I SAW THE DEMONSTRATORS FINALLY BREAK THROUGH THE LINES AND HUNDREDS OF THEM CHARGING TOWARD THE BUILDING IN A MAD STAMPEDE.

THEY DID SUCCEED IN BREAKING OPEN SOME OF THE DOORS, BUT WHEN THEY DID THEY FOUND THAT THE ARMY HAD ALREADY STATIONED TROOPS IN THERE, AND THE MILITARY TROOPS AND THE MARSHALS PROCEEDED TO PUSH THEM BACK.

IT TURNED INTO QUITE A FRACAS.

Q SIR, YOU MENTIONED THAT LATER THERE WAS A SPEECH OR STATEMENT MADE BY THE LEADER OF THE SDS.

WHEN WAS THAT STATEMENT MADE AND, TO THE BEST OF YOUR RECOLLECTION, WHO MADE IT?

A THAT WAS MARK RUDD, WHO WAS ONE OF THE LEADERS OF THE SDS. AND I BELIEVE IT WAS MADE EARLY IN 1968, WHEN HE INDICATED THAT THE TIME HAD COME FOR BOMBINGS AND VIOLENCE.

Q AND YOU TESTIFIED CONCERNING THINGS THAT WERE APPEARING IN CAMPUS NEWSPAPERS.

WHEN WERE THOSE THINGS APPEARING?

A ALONG ABOUT THE SAME TIME IN WHICH THEY WOULD ACTUALLY DEVELOP ILLUSTRATIONS AS TO HOW TO MAKE MOLOTOV COCKTAILS AND HOW TO MAKE THINGS SUCH AS FRAGMENTATION BOMBS AND THE LIKE, WHICH WERE TO BE USED IN CONNECTION WITH THE PROPOSED VIOLENCE.

Q MR. BRENNAN, YOU'VE ALSO TESTIFIED EARLIER TODAY REGARDING THE MATTER OF POSSIBLE COMMUNIST INVOLVEMENT IN WHAT I GUESS WE COULD GENERALLY CALL THE PEACE MOVEMENT.

WOULD YOU EXPLAIN WHAT THE SIGNIFICANCE OF THAT INVOLVEMENT WAS TO THE BUREAU?

THE COURT: INVOLVEMENT OF WHOM?

MR. WHITE: INVOLVEMENT OF THE COMMUNIST PARTY OR COMMUNIST MEMBERS IN THE PEACE MOVEMENT.

THE WITNESS: YES.

AS I INDICATED, THERE WAS A STRONG INFLUX OF COMMUNIST ELEMENTS IN THE ANTIWAR MOVEMENT.

AND I THINK IT IS IMPORTANT TO BEAR IN MIND THAT THE WAR DID INVOLVE THE UNITED STATES WITH ENEMY FORCES WHICH WERE THEN BEING SUPPORTED BY THE SOVIET UNION, AND,

THAT A CONCENTRATION OF THE DEMONSTRATION SHOULD FOCUS ON THE WASHINGTON SCENE.

AND I RECALL PARTICULARLY THAT IT WAS OF GREAT INTEREST TO ME THAT THE DEMONSTRATION DID TAKE PLACE AS ORGANIZED HERE IN WASHINGTON, AND ON THE SAME DAY THAT IT DID THERE WERE ALSO COMMUNIST DEMONSTRATIONS AT THE AMERICAN EMBASSIES IN PARIS, FRANCE, AND IN LONDON AND IN SEVERAL OTHER FOREIGN CAPITALS, ALL OF WHICH INDICATED TO ME THAT THERE WAS SOME DEGREE OF ORCHESTRATION ON THE INTERNATIONAL SCALE BY THE COMMUNISTS OF THESE DEMONSTRATIONS.

Q THANK YOU, SIR.

I BELIEVE YOU ALSO MENTIONED, OR REFERRED TO THE QUESTION OF TRAVELS ABROAD BY PERSONS CONNECTED WITH THE WOMEN'S STRIKE FOR PEACE.

DID YOU TESTIFY ABOUT THAT SUBJECT EARLIER TODAY?

A I DON'T BELIEVE SO.

I THINK THE QUESTION WAS RAISED ABOUT IT, BUT --

Q OKAY.

NOW, MR. BRENNAN, THERE WERE ALSO A NUMBER OF QUESTIONS REGARDING THE ISSUE OF COORDINATION OR NOT WITH OTHER LAW ENFORCEMENT OR INTELLIGENCE SERVICES.

I THINK THE QUESTION FIRST WAS, WAS THERE ANY COORDINATION WITH ANY POLICE DEPARTMENT WITH REGARD TO THE COUNTERINTELLIGENCE PROGRAM NEW LEFT.

A DEFINITELY NOT, NO.

Q WOULD THERE HAVE BEEN, OR WAS THERE, TO YOUR KNOWLEDGE, COORDINATION WITH POLICE DEPARTMENTS, INCLUDING SPECIFICALLY THE METROPOLITAN POLICE DEPARTMENT ON OTHER ISSUES?

A ON OTHER ISSUES, YES -- THERE IS DEFINITE COORDINATION BETWEEN THE FBI AND THE METROPOLITAN POLICE DEPARTMENT, ESPECIALLY IN CONNECTION WITH DEMONSTRATIONS.

Q WHAT WAS THE NATURE OF THAT COORDINATION?

A IT WAS OUR RESPONSIBILITY TO FURNISH THEM WITH ALL INFORMATION THAT WE DEVELOPED THROUGH OUR SOURCES AND INFORMANTS CONCERNING THE APPROPRIATE ACTIONS FOR THE DEMONSTRATIONS, WHETHER THEY BE PEACEFUL OR VIOLENT, SO THE METROPOLITAN POLICE, THE CAPITAL POLICE, THE PARK POLICE, WOULD KNOW WHAT TO EXPECT -- WHETHER OR NOT THEY WERE GOING TO HAVE TEN THOUSAND OR TWO HUNDRED THOUSAND AND WHERE THE DEMONSTRATION WAS LIKELY TO TAKE PLACE, WHETHER OR NOT THERE WAS INDICATION THERE WAS GOING TO BE VIOLENCE, ET CETERA.

Q DID THE METROPOLITAN POLICE DEPARTMENT SPECIFICALLY, TO YOUR KNOWLEDGE, HAVE AN OBLIGATION TO PROVIDE INFORMATION TO THE FEDERAL BUREAU OF INVESTIGATION REGARDING SUCH ISSUES?

A YES.

IN TURN, IF THEY DEVELOPED INFORMATION WHICH INDICATED THAT THERE WAS GOING TO BE SOME ATTEMPTS TO

DEFACE GOVERNMENTAL PROPERTY OR THINGS OF THAT NATURE, IT WAS THEIR RESPONSIBILITY IN TURN TO RECOGNIZE WHAT OUR RESPONSIBILITIES WERE AND FURNISH US THAT INFORMATION.

Q WHAT WAS THE FBI'S PRINCIPAL FUNCTION, IF ANY, ON THE DAY OF A DEMONSTRATION OR WHILE A DEMONSTRATION WAS OCCURRING?

A PRINCIPALLY, AT THAT POINT YOUR FUNCTION WAS AS AN OBSERVER.

Q WHAT TO YOUR KNOWLEDGE WAS THE FUNCTION OF THE METROPOLITAN POLICE DEPARTMENT ON THE DAY OF SUCH A DEMONSTRATION?

A UNFORTUNATELY, THE METROPOLITAN POLICE BORE THE BURDEN OF TRYING TO DEAL WITH ALL THE DEMONSTRATORS, TRYING TO DEAL WITH THE ACTUAL LINES THAT ERUPTED ON THE STREETS, OF TRYING TO COPE WITH THE PROBLEM.

Q NOW, MR. BRENNAN, MS. PILSBURY ASKED YOU TO LOOK AT A NUMBER OF DOCUMENTS EARLIER TODAY AND I'D LIKE TO GO THROUGH AT LEAST SOME OF THOSE WITH YOU THIS AFTERNOON IF WE COULD.

WOULD YOU LOOK, PLEASE, SIR, AT EXHIBIT 20-1?

A YES. I HAVE IT.

Q SIR, WOULD YOU JUST DESCRIBE BRIEFLY FOR THE JURY THE NATURE OF THIS DOCUMENT?

A YES.

IT'S AN AIR-TEL FROM THE WASHINGTON FIELD OFFICE

TO FBI HEADQUARTERS DATED 9/24/69.

IT DEALS WITH A COUNTERINTELLIGENCE PROGRAM BLACK NATIONALIST - HATE GROUPS. AND THIS IS THE ONE THAT DEALS WITH THE EFFORTS TO INVOLVE JULIUS HOBSON, MAKE HIM APPEAR AS AN UNCLE TOM, AND THE DISPUTE ABOUT THE REVEREND DOUGLAS MOORE, WHETHER OR NOT THEY WERE GOING TO MAKE DEMANDS ON WHITE GROUPS FOR THE BLACK UNITED FRONT, I BELIEVE.

Q DID YOUR SECTION AT THAT TIME HAVE RESPONSIBILITY FOR THE SUPERVISION OF A COUNTERINTELLIGENCE PROGRAM, BLACK NATIONALIST HATE GROUPS?

A NO.

TO THE BEST OF MY KNOWLEDGE, IT DID NOT.

Q IS THERE ANYTHING ON THE FACE OF THAT DOCUMENT THAT WOULD INDICATE TO YOU THAT THIS DOCUMENT WAS ROUTED THROUGH YOUR SECTION?

A NO, THERE IS NOT.

Q IS THERE ANY INDICATION ON THIS DOCUMENT TO INDICATE THAT YOU PERSONALLY SAW IT AT THAT TIME?

A NO.

Q TO THE BEST OF YOUR RECOLLECTION, SIR, WHEN DID YOU FIRST SEE THIS DOCUMENT?

A NOT UNTIL THIS BECAME AN ISSUE IN THIS SITUATION.

IN OTHER WORDS, I DON'T BELIEVE I EVER SAW THIS BEFORE. I FORGET WHETHER I WAS SHOWN THIS DURING THE

DEPOSITION. I HAVE NOT SEEN THIS DOCUMENT ANYTIME BEFORE UNTIL THIS YEAR.

Q SIR, WAS IT YOUR PRACTICE OR NOT TO PLACE YOUR INITIALS ON ANY DOCUMENTS YOU READ?

A OH, YES.

Q AND DO YOUR INITIALS APPEAR ANYWHERE ON THIS DOCUMENT?

A NO.

Q I'D LIKE YOU TO LOOK NOW, SIR, TO EXHIBIT NUMBER 21.

DO YOU HAVE THAT BEFORE YOU?

A YES, I DO.

Q NOW, WOULD YOU PLEASE READ TO THE JURY -- I THINK IT WOULD BE SUFFICIENT TO READ THE TO AND FROM LINES AND THE CAPTION OF THE DOCUMENT.

A IT'S AN AIR-TEL TO THE DIRECTOR FROM THE SPECIAL AGENT IN CHARGE OF THE WASHINGTON FIELD OFFICE. IT'S DATED 10/1/69.

THE SAME CAPTION, "COINTELPRO - BLACK NATIONALIST HATE GROUPS - RACIAL MATTERS."

Q WOULD YOU LOOK, SIR, AT THE -- THIS DOCUMENT, THIS EXHIBIT, ACTUALLY CONTAINS A NUMBER OF PAGES -- WOULD YOU LOOK AT PAGE 21-5, PLEASE, SIR?

A TWENTY-ONE DASH WHAT?

Q FIVE.

A YES.

Q DO YOU HAVE THAT BEFORE YOU?

A YES, I HAVE THAT.

Q THAT 21-5, IS THAT THE COPY OF THE MEMORANDUM WHICH WOULD HAVE BEEN SENT TO FBI HEADQUARTERS?

A 21-5 IS AN AIR-TEL THAT WAS SENT TO THE HEADQUARTERS FROM THE WASHINGTON FIELD OFFICE.

MS. PILSBURY: YOUR HONOR, TO HELP SPEED THINGS UP, WE'LL STIPULATE THAT HIS INITIALS DON'T APPEAR TO BE ON THIS DOCUMENT.

THE COURT: DO YOU HAVE ANY MORE LIKE THAT, THAT YOU CAN STIPULATE ABOUT?

MS. PILSBURY: I'LL STIPULATE THAT HIS INITIALS AREN'T ON ANY OF THE DOCUMENTS THAT -- I'M NOT SURE I HAVE A LIST HERE. BUT I WOULD BE HAPPY TO STIPULATE THAT.

THE COURT: LET'S SEE IF WE CAN'T DO THAT.

MR. WHITE: YOUR HONOR, THE REASON WE'RE GOING THROUGH THIS IS BECAUSE OF THE DISCUSSIONS EARLIER ON THESE DOCUMENTS THAT PERHAPS THESE DOCUMENTS WENT THROUGH HIS DESK, EVEN THOUGH THEY APPLY TO ANOTHER SECTION'S RESPONSIBILITY.

I'LL TRY TO DO THIS AS QUICKLY AS POSSIBLE.

THE COURT: VERY WELL.

IF YOU FEEL YOU WANT TO BE MORE EXPOSITORY ABOUT IT, GO RIGHT AHEAD.

MR. WHITE: I'LL TRY NOT TO WASTE OUR TIME, YOUR HONOR.

BY MR. WHITE:

Q MR. BRENNAN, IS THERE ANY INDICATION ON THIS DOCUMENT THAT YOU EVER SAW IT OR READ IT AT THE TIME THAT IT WAS TRANSMITTED AND CIRCULATED?

A THIS WAS 21-5?

Q THAT'S CORRECT.

A NO, THERE IS NOT.

Q TO THE BEST OF YOUR RECOLLECTION WHEN WAS THE FIRST TIME THAT YOU SAW THIS DOCUMENT?

A AGAIN, POSSIBLY AT THE DEPOSITION EARLIER THIS YEAR, OR ELSE, HERE.

Q MR. BRENNAN, IF YOU WOULD NOW LOOK AT EXHIBIT NUMBER 27.

DO YOU HAVE THAT, SIR?

A I CAN'T FIND IT.

(PAUSE)

I HAVE IT.

Q WOULD YOU STATE BRIEFLY FOR THE JURY, PLEASE, THE NATURE OF THIS DOCUMENT, INCLUDING THE DATE, SIR?

A A LETTER FROM THE WASHINGTON FIELD OFFICE TO THE FBI HEADQUARTERS, DATED 10/9/69, AND IT'S CAPTION IS "COINTEL PROGRAM NEW LEFT."

Q WHAT DOES THIS DOCUMENT RELATE TO, SIR?

A IT DEALS WITH THE PREPARATION OF THAT PUBLICATION CALLED THE "RATIONAL OBSERVER" TO BE DISTRIBUTED ON THE CAMPUS OF AMERICAN UNIVERSITY.

Q DID THIS MEMORANDUM, FROM YOUR EXAMINATION -- WAS THIS MEMORANDUM ROUTED TO YOUR SECTION AT THAT TIME, THE INTERNAL SECURITY SECTION?

A YES.

Q DO YOUR INITIALS APPEAR ANYWHERE ON THE FACE OF THIS DOCUMENT?

A NO.

Q DO THE INITIALS OF ANYONE SIGNING ON YOUR BEHALF APPEAR ANYWHERE ON THE DOCUMENT?

A YES.

Q AND WHERE DOES THAT APPEAR, SIR?

A DOWN AT THE BOTTOM, WHERE IT'S STAMPED, "INTERNAL SECURITY."

Q AND WOULD YOU EXPLAIN THE SIGNIFICANCE OF THAT -- WHAT APPEARS HERE?

A YES.

FOR FILING PURPOSES, WHEN MAIL IS RECEIVED WHICH REFERS TO A CAPTIONED MATTER, WHICH IS BEING HANDLED IN A PARTICULAR SECTION, WHEN EVERYTHING ELSE HAS BEEN DONE WITH THAT MAIL, IT IS STAMPED WITH THE SECTION DESIGNATION, "INTERNAL SECURITY," AND SOMEBODY HAS TO INITIAL THAT ULTIMATELY FOR IT TO GO INTO THE FILE.

IN OTHER WORDS, IT SHOWS THAT IT WAS RECEIVED AND HANDLED IN THE SECTION, AND IS NOW READY TO GO TO FILING.

Q SIR, IF YOU WOULD LOOK AT THE UPPER RIGHT-HAND CORNER, JUST BELOW THE DATE OF THIS DOCUMENT?

A YES.

Q DO YOU SEE INITIALS WRITTEN THERE?

A YES.

BUT IT'S VERY DIFFICULT TO MAKE OUT.

Q LET ME SHOW YOU ANOTHER COPY. PERHAPS THIS IS --

LOOKING STILL AT EXHIBIT NUMBER 27, DO YOU SEE INITIALS WRITTEN BELOW THE DATE OF THE DOCUMENT?

A YES.

IT'S A "B/CWT."

Q AND WHAT IS THE SIGNIFICANCE OF THAT, SIR?

A THE "B" IS TO INDICATE MY NAME, "BRENNAN." THE SLANT MEANS THAT -- WITH RIGHT UNDERNEATH "CWT" -- MEANS THAT THE MAN WHO WAS MY ASSISTANT, MY NUMBER ONE MAN, CONRAD W. THOMPSON, INITIALED THE DOCUMENT FOR ME.

Q IS THERE ANY INDICATION ON THE DOCUMENT THAT YOU PERSONALLY SAW IT?

A NO, THERE IS NOT.

Q IF YOU NOW LOOK AT EXHIBIT NUMBER 28.

A YES.

Q DOES THIS DOCUMENT RELATE TO THE SUBJECT MATTER OF EXHIBIT NUMBER 27?

A YES, IT DOES.

Q IS THERE ANYTHING ON THE FACE OF THIS DOCUMENT WHICH WOULD INDICATE THAT YOU PERSONALLY SAW IT?

A NO, IT DOES NOT.

Q DO YOU HAVE ANY RECOLLECTION AS TO WHETHER YOU SAW IT?

A NO, I DO NOT.

Q WHAT IS YOUR BEST RECOLLECTION AS TO WHEN YOU FIRST SAW THIS DOCUMENT?

A AGAIN, THIS YEAR.

I FORGET THE NATURE OF DOCUMENTS THAT WERE SHOWN ME AT THE DEPOSITION AND THE NATURE OF DOCUMENTS HERE, BUT I HAVE NOT SEEN THIS DOCUMENT BEFORE THIS YEAR.

Q AND WHAT IS THE DATE OF THIS DOCUMENT, SIR?

A THIS IS OCTOBER 24TH, 1969.

Q NOW, SIR, I'D LIKE YOU TO LOOK AT EXHIBIT 29.

AGAIN, DOES EXHIBIT NUMBER 29 RELATE TO THE SUBJECT MATTER OF EXHIBITS 27 AND 28?

A YES, IT DOES.

Q AND WHAT IS THE DATE OF THAT DOCUMENT?

A NOVEMBER 3, 1969.

Q WHAT IS THE FUNCTION OF EXHIBIT 29?

A IT GRANTS AUTHORITY TO THE WASHINGTON FIELD OFFICE TO DISTRIBUTE THAT PUBLICATION THEY CALLED "THE RATIONAL OBSERVER" ON THE CAMPUS OF AMERICAN UNIVERSITY.

Q IF YOU LOOK AT THE BOTTOM OF THE DOCUMENT, SIR, I DIRECT YOUR ATTENTION TO THE HANDWRITTEN INITIALS.

WOULD YOU EXPLAIN TO THE JURY, PLEASE, THE SIGNIFICANCE OF THE INITIALS AND ALSO STATE THE IDENTITY OF THE PERSON WHO INITIALED THIS DOCUMENT?

A OKAY.

IT LOOKS LIKE "BW," WHICH WOULD BE BERNIE WELLS, WHO WOULD HAVE INITIALED IT AS A UNIT CHIEF, I BELIEVE, AND MY INITIAL, "B," WITH A SLANT, WITH A "CWT" UNDERNEATH IT.

IT MEANS IT WAS INITIALED BY MR. CONRAD W. THOMPSON FOR ME.

I, APPARENTLY, WAS THEN SITTING ON THE BRANCH CHIEF'S DESK. THE "JAS" LOOKS LIKE MY INITIAL, IN WHICH I INITIALED FOR HIM AS BRANCH CHIEF, TO FORWARD IT INTO THE ASSISTANT DIRECTOR.

IT BEARS THE INITIALS OF "WCS," WHICH WAS THE INITIALS OF THE ASSISTANT DIRECTOR, WILLIAM C. SULLIVAN. AND IT LOOKS LIKE IT WAS INITIALED TO GO OUT OF THE MAILROOM BY MR. DE LOCHE, WHO WAS THEN THE ASSISTANT TO THE DIRECTOR.

Q DO MR. DE LOCHE'S INITIALS ON THIS DOCUMENT INDICATE APPROVAL BY HIM?

A YES, IT APPARENTLY DOES.

Q DOES YOUR NAME APPEAR ANYWHERE ELSE ON THE FACE OF THIS DOCUMENT?

A YES.

UP AT THE TOP, NEAR THE RIGHT-HAND CORNER, UNDERNEATH THE DATE.

Q WHAT IS THE SIGNIFICANCE OF YOUR NAME BEING PLACED AT THAT LOCATION?

A THAT, AGAIN, IS THE PROCESS OF GETTING THIS COMMUNICATION BACK DOWN TO THE INTERNAL SECURITY SECTION.

Q AND WOULD YOU STATE FOR THE JURY, PLEASE, WHETHER THE NAME IS HANDWRITTEN OR TYPEWRITTEN?

A IT'S HANDWRITTEN.

Q AND WHO WOULD HAVE WRITTEN IT AT THAT LOCATION?

A I BELIEVE THAT THAT WOULD BE PUT ON IN THE OFFICE OF THE ASSISTANT DIRECTOR TO GET IT BACK DOWN TO THE INTERNAL SECURITY SECTION.

Q IS THERE ANY INDICATION AT THAT POINT IN THE DOCUMENT AS TO WHETHER YOU PERSONALLY SAW THE DOCUMENT?

A NO.

Q DOES IT INDICATE WHO MIGHT HAVE PERSONALLY SEEN THE DOCUMENT --

A MY ASSISTANT, MR. CONRAD W. THOMPSON.

Q HIS INITIALS APPEAR AT THAT LOCATION.

A YES.

Q NOW, SIR, IF YOU LOOK AT EXHIBIT NUMBER 26.

DO YOU HAVE THAT BEFORE YOU NOW, SIR?

A YES.

Q WOULD YOU DESCRIBE FOR THE JURY BRIEFLY WHAT THIS

DOCUMENT IS?

A EXHIBIT 26 IS A MEMORANDUM FROM ME, C. D. BRENNAN, TO MR. SULLIVEN, DATED SEPTEMBER 5, 1969, CAPTIONED, "COUNTERINTELLIGENCE PROGRAM NEW LEFT, RECOMMENDED APPROVAL FOR DISTRIBUTION OF A BLIND MEMORANDUM REVEALING EVIDENCE OF GROWING DISSATISFACTION OF MILITANT BLACKS WITH THE NEW LEFT."

Q ARE THERE INITIALS APPEARING NEXT TO YOUR TYPEWRITTEN NAME?

A YES.

Q WOULD YOU JUST DESCRIBE FOR THE JURY WHAT THE INITIALS ARE AND WHAT THE SIGNIFICANCE OF THAT IS?

A IT'S A "B" WITH A SLANT, AND I CAN'T MAKE OUT --

THE COURT: I GOT OFF THE TRACK.

I SEE THE NUMBER. I JUST MISSED --

THE WITNESS: TWENTY-SIX.

MR. WHITE: I'M NOT SURE WE GOT THE ANSWER TO THAT QUESTION.

IT'S BEEN INITIALED FOR ME WITH A "B" WITH A SLANT -- AND ON MY COPY I CAN'T MAKE OUT WHOSE INITIALS ARE UNDERNEATH MINE.

BY MR. WHITE:

Q BUT IT WAS SOMEBODY ACTING ON YOUR BEHALF?

A YES.

Q NOW, LOOKING AGAIN AT THE BOTTOM OF THE DOCUMENT,

WOULD YOU DESCRIBE FOR THE JURY -- EXCUSE ME.

DIRECTING YOUR ATTENTION TO THE BOTTOM OF THE FIRST PAGE OF THIS DOCUMENT, TO THE HANDWRITTEN INITIALS THERE, WOULD YOU DESCRIBE FOR THE JURY THE SIGNIFICANCE OF THOSE INITIALS AND ALSO IDENTIFY, IF YOU CAN, THE [illegible] WHO INITIALED THE DOCUMENT?

A I'LL DO THE BEST I CAN.

YOURS ISN'T MUCH BETTER THAN MINE.

Q WELL, IF YOU WOULD, SIR. LET ME MAKE THIS SIMPLER.

WOULD YOU PLEASE IDENTIFY THE HIGHEST OFFICIAL WHOSE INITIALS INDICATE APPROVAL OF THIS DOCUMENT?

A MR. HOOVER.

MR. HOOVER MARKED, "OKAY. H." HIS ASSOCIATE DIRECTOR, MR. TOLSON, MARKED IT WITH A "T." THE ASSISTANT TO THE DIRECTOR, MR. DE LOCHE, HIS INITIAL IS THERE, WITH A "D."

THE ASSISTANT DIRECTOR, MR. W. C. SULLIVAN, HIS INITIALS ARE "WCS." I BELIEVE MR. DE LOCHE'S ASSISTANT, STERLING DONOHOE, HIS INITIALS --

Q THAT WILL BE SUFFICIENT.

DIRECTING YOUR ATTENTION TO THE LEFT-HAND COLUMN OF THE FIRST PAGE, THERE'S SOME HANDWRITTEN MATERIAL IN THE MARGIN.

CAN YOU READ THAT, SIR?

A YES.

Q AND WHAT DOES IT SAY?

A IT SAYS, "HANDLED." THERE'S A DATE ON IT. IT'S A LITTLE DIFFICULT. IT LOOKS LIKE IT'S 9/8/69.

Q WHAT IS THE SIGNIFICANCE, IF YOU KNOW, OF THE WORK "HANDLED"?

A THIS WAS -- THERE WAS A MASS MEDIA PROGRAM, WHICH WAS CONDUCTED BY MR. DE LOCHE, AND MR. DE LOCHE WAS THE ASSISTANT TO THE DIRECTOR.

HE HANDLED CONGRESSIONAL LIAISON, AND HE ALSO HANDLED RELATIONS WITH THE NEWS MEDIA.

AND THE MASS MEDIA PROGRAM INVOLVED MR. DE LOCHE WITH VARIOUS DIVISIONS BEING INSTRUCTED TO BE ALERT FOR MATERIAL WHICH MR. DE LOCHE COULD FEED TO HIS CONTACTS IN THE NEWS MEDIA.

THIS PARTICULAR ITEM, THIS MEMORANDUM, WAS PREPARED IN CONJUNCTION WITH THAT, AND IT WAS THEN FORWARDED TO MR. DE LOCHE FOR HIS SO-CALLED "USE IN MASS MEDIA PROGRAM."

NOW, THIS WRITTEN OVER HERE, HANDLED, 9/8/69, IS AFTER MR. HOOVER HAD SAID, "OKAY, FINE, MR. DE LOCHE, YOU GO AHEAD AND HANDLE THIS."

THEN MR. DE LOCHE WRITES OVER ON THE SIDE, "HANDLED," AND PUTS THE DATE. BUT --

Q DO YOU KNOW WHETHER THE WORD HANDLED MEANS THAT THE DOCUMENT WAS ACTUALLY GIVEN TO SOMEONE IN THE PRESS?

A NO, I DON'T.

MR. DE LOCHE WAS NOT ACCOUNTABLE, OTHER THAN TO MR. HOOVER, SO WHEN MR. DE LOCHE WOULD WRITE "HANDLED," YOU DIDN'T KNOW WHETHER HE HANDLED IT BY GIVING IT TO ONE OF HIS CONTACTS IN THE PRESS OR WHETHER HE HANDLED IT BY THROWING IT IN THE WASTEBASKET.

Q TO YOUR KNOWLEDGE AND RECOLLECTION WAS THIS DOCUMENT PUBLISHED IN ANY NEWSPAPER OR OTHER PUBLICATION?

A NOT THAT I EVER RECALL.

Q SIR, YOUR NAME ALSO APPEARS IN THE UPPER RIGHT-HAND CORNER.

A YES.

Q AGAIN -- AND THERE ARE ALSO INITIALS THAT APPEAR THERE -- DID YOU PERSONALLY PLACE INITIALS ACROSS YOUR NAME ON THIS DOCUMENT?

A NO.

Q IS THERE ANYTHING ON THE FACE OF THE DOCUMENT WHICH INDICATES THAT YOU PERSONALLY SAW THIS DOCUMENT AT THE TIME IT WAS PREPARED AND TRANSMITTED?

A NO, THERE IS NOT.

Q TO THE BEST OF YOUR RECOLLECTION WHEN DID YOU FIRST SEE THIS DOCUMENT?

A THIS YEAR, AGAIN, EITHER IN CONNECTION WITH A DEPOSITION OR HERE. I FORGET WHICH.

Q NOW, LOOKING AT EXHIBIT NUMBER 15.

A YES, SIR.

Q WOULD YOU JUST STATE BRIEFLY FOR THE JURY THE NATURE OF THIS DOCUMENT, INCLUDING THE DATE?

A YES.

AN AIR-TEL FROM THE WASHINGTON FIELD OFFICE TO FBI HEADQUARTERS, DATED JANUARY 21ST, 1969, CAPTIONED, "COINTEL PROGRAM NEW LEFT," AND IT CONCERNS THE DISRUPTION BY THE WASHINGTON FIELD OFFICE OF THE WALKIE-TALKIES USED BY SOME OF THE DEMONSTRATORS IN CONNECTION WITH THE DEMONSTRATION AT THE PRESIDENTIAL INAUGURATION IN JANUARY OF 1969.

Q MR. BRENNAN, IS THERE ANYTHING ON THE FACE OF THIS DOCUMENT WHICH INDICATES THAT YOU PERSONALLY SAW IT?

A NO, THERE IS NOT.

Q TO THE BEST OF YOUR RECOLLECTION, DID YOU SEE THIS DOCUMENT?

A I DON'T RECALL SPECIFICALLY.

I MAY HAVE. I'M NOT SURE.

Q DO YOU HAVE ANY RECOLLECTION AS TO WHETHER YOU KNEW ABOUT THIS ACTIVITY AT THE TIME IT OCCURRED?

A YES.

SOMEBODY EITHER TOLD ME OR I SAW SOMETHING.

I DID KNOW THAT THERE HAD BEEN SOME DISRUPTION OF THE DEMONSTRATORS' WALKIE-TALKIE FREQUENCY.

NOW, HOW I HEARD IT OR HOW I SAW IT, AT THIS POINT I CAN'T TELL YOU. I DON'T REMEMBER NOW. BUT I DO REMEMBER

HEARING OF THE INCIDENT.

Q IS IT YOUR RECOLLECTION THAT YOU HEARD ABOUT THIS MATTER ONLY AFTER THE -- WELL --

A YES. AFTER IT HAPPENED.

Q WERE YOU IN A POSITION, UPON HEARING ABOUT IT, TO EITHER APPROVE OR DISAPPROVE OF THE ACTIVITY?

A IT WAS A FAIT ACCOMPLI. IT HAD ALREADY TAKEN PLACE.

Q TO THE BEST OF YOUR RECOLLECTION WAS THERE ANY INFORMATION PROVIDED TO HEADQUARTERS PRIOR TO THE INAUGURATION REGARDING THIS KIND OF ACTIVITY?

A NOT TO MY KNOWLEDGE, NO.

Q SIR, AGAIN, LOOK AT EXHIBITS 69 AND 70.

A YES.

Q DO YOU HAVE THOSE BEFORE YOU?

A YES, I HAVE THEM.

Q WOULD YOU JUST DESCRIBE BRIEFLY TO THE JURY THE NATURE OF THESE DOCUMENTS, INCLUDING THE DATES?

A OKAY.

EXHIBIT 69 IS AN AIR-TEL FROM THE WASHINGTON FIELD OFFICE TO FBI HEADQUARTERS, JULY 17, '70, AND IT'S DEALING WITH THE COINTEL PROGRAM, NEW LEFT PROGRAM.

AND IN IT THE WASHINGTON FIELD OFFICE INDICATED THAT THEY HAD BEEN SUCCESSFUL, THROUGH THEIR INTERVIEWS WITH SOME OF THE NEW LEFT PEOPLE, IN PRODUCING SOME ANXIETY ON

THE PART OF THOSE PEOPLE.

AND THEY SAID THE BUREAU MIGHT WANT TO RECOMMEND THAT TYPE OF ACTIVITY TO OTHER FIELD OFFICES.

EXHIBIT 70 IS A MEMORANDUM FROM THE WASHINGTON FIELD OFFICE TO THE DIRECTOR, DATED 12/15/70.

IT DEALS IN PART WITH THE SAME ISSUE.

Q MR. BRENNAN, LOOKING AT EXHIBIT NUMBER 69, WHAT WAS YOUR POSITION ON THAT DATE, ON JULY 17, 1970?

A I WAS ACTING DIRECTOR, ACTING ASSISTANT DIRECTOR, AT THE TIME.

Q IS THERE ANYTHING ON THE FACE OF THIS DOCUMENT WHICH WOULD INDICATE THAT YOU PERSONALLY SAW IT AT THE TIME IT ARRIVED OR WAS CIRCULATED IN THE FBI HEADQUARTERS?

A NO, THERE IS NOT.

Q DOES YOUR NAME APPEAR ANYWHERE ON THIS DOCUMENT?

A NO, IT DOES NOT.

Q SIMILARLY, WITH REGARD TO EXHIBIT NUMBER 70, WHAT WAS YOUR POSITION IN DECEMBER OF 1970?

A DECEMBER OF 1970 -- I WAS ASSISTANT DIRECTOR OF THE DOMESTIC INTELLIGENCE DIVISION.

Q DOES YOUR NAME APPEAR ANYWHERE ON THIS DOCUMENT?

A NO, SIR.

Q IS THERE ANY INDICATION ON THE DOCUMENT THAT YOU PERSONALLY SAW IT AT THE TIME IT ARRIVED IN OR WAS CIRCULATED IN FBI HEADQUARTERS?

A NO, SIR.

Q WERE YOU AWARE OF OR FAMILIAR WITH THE SUBJECT MATTER OF THESE DOCUMENTS AT THAT TIME, DURING JULY TO DECEMBER OF 1970, DEALING WITH INTENSIVE INTERVIEWS?

A I DON'T RECALL. NO.

Q NOW, SIR, LOOKING AT EXHIBIT 105-1.

A I HAVE 105.

Q LET ME JUST CONFIRM THAT WE'RE TALKING ABOUT THE SAME DOCUMENT.

SIR, LOOKING AT THE EXHIBIT WHICH HAS BEEN MARKED AS PLAINTIFFS' EXHIBIT 105-1, FIRST PAGE OF THE DOCUMENT, WHICH YOU'RE HOLDING, WOULD YOU DESCRIBE FOR THE JURY, PLEASE, THE NATURE OF THIS DOCUMENT, INCLUDING ITS DATE?

A AN AIR-TEL FROM OUR CINCINNATI OFFICE TO THE FBI HEADQUARTERS, DATED DECEMBER 20, 1968, CAPTIONED, "COINTEL PROGRAM NEW LEFT," AND IT INVOLVED A REQUEST FOR BUREAU AUTHORITY FOR THE CINCINNATI OFFICE TO UNDERTAKE A COUNTERINTELLIGENCE ACTION AGAINST STUDENTS AT OHIO STATE UNIVERSITY WHO WERE PLANNING TO TRAVEL TO WASHINGTON, D. C. TO DEMONSTRATE IN CONNECTION WITH THE PRESIDENTIAL INAUGURATION ON JANUARY 20TH.

Q WAS THIS DOCUMENT ROUTED TO THE INTERNAL SECURITY SECTION AT THE TIME YOU WERE ITS CHIEF?

A YES, IT WAS.

Q AND IS THERE ANY INDICATION ON THIS DOCUMENT, THAT

IS, WHAT WOULD BE THE 105-1, THE FIRST PAGE OF WHAT YOU'RE HOLDING, AS WELL AS THIS PAGE TWO OF WHAT YOU HAVE -- IS THERE ANY INDICATION -- NO, SIR.

JUST THE FIRST TWO PAGES.

IS THERE ANYTHING ON THOSE PAGES WHICH WOULD INDICATE THAT YOU PERSONALLY SAW THIS DOCUMENT AT THE TIME IT ARRIVED IN AND WAS CIRCULATED AT FBI HEADQUARTERS?

A NO, THERE IS NOT.

Q DOES IT INDICATE WHETHER ANYONE ACTING IN YOUR BEHALF SAW THIS DOCUMENT?

A YES.

MY ASSISTANT, OR, AS I SAY, NUMBER ONE MAN, AS I CALLED HIM, CONRAD W. THOMPSON, INITIALED FOR ME UP IN THE RIGHT-HAND CORNER WITH MY INITIAL, "B" WITH A SLANT, AND HIS "CWT" UNDERNEATH IT.

Q WERE YOU AWARE AT THIS TIME, TO THE BEST OF YOUR RECOLLECTION, OF THIS PROPOSAL REGARDING COUNTERINTELLIGENCE OPERATIONS BY THE CINCINNATI OFFICE?

A NO, I DON'T RECALL.

Q NOW, MR. BRENNAN, NOW TURNING TO THE LAST PAGE OF THE DOCUMENT YOU'RE HOLDING, WHICH I BELIEVE PLAINTIFFS HAVE IDENTIFIED AS 105-2, WOULD YOU DESCRIBE BRIEFLY FOR THE JURY, PLEASE, THE NATURE OF THAT DOCUMENT?

A YES.

IT'S TO THE CINCINNATI FBI OFFICE, FROM THE

DIRECTOR, FBI, DATED 12/27/68, CAPTIONED, "COUNTER-INTELLIGENCE PROGRAM NEW LEFT," BY WHICH THEY AUTHORIZE THE CINCINNATI OFFICE TO PROCEED WITH THE ACTION THAT THEY HAD RECOMMENDED RELATIVE TO THE STUDENTS AT OHIO STATE UNIVERSITY.

Q DOES YOUR NAME APPEAR ON THIS DOCUMENT, SIR?

A YES, IT DOES.

Q AND IS THE NAME IN HANDWRITING OR TYPING?

A IT'S HANDWRITTEN.

Q AND TO THE BEST OF YOUR KNOWLEDGE, LOOKING AT THE DOCUMENT, WHO WOULD HAVE WRITTEN YOUR NAME AT THAT LOCATION ON THE DOCUMENT?

A IT WAS PROBABLY WRITTEN IN THE OFFICE OF THE ASSISTANT DIRECTOR.

Q AND YOUR POSITION AT THIS TIME WAS SECTION CHIEF?

A NO. WAIT A MINUTE. YES.

Q WOULD THE NAME HAVE BEEN WRITTEN THERE BEFORE OR AFTER THIS DOCUMENT HAD BEEN APPROVED FOR TRANSMISSION TO THE CINCINNATI OFFICE?

A THAT WOULD BE WRITTEN AFTERWARDS, TO INSURE THAT IT GOT BACK TO THE SECTION.

Q IS THERE ANY INDICATION ON THE FACE OF THIS DOCUMENT THAT YOU SAW IT AT THE TIME IT WAS PREPARED, CIRCULATED AND TRANSMITTED BACK TO YOUR SECTION?

A NO, THERE IS NOT.

Q NOW, SIR, IF YOU WILL LOOK AT EXHIBIT NUMBER 31-A.

A YES.

Q WOULD YOU DESCRIBE THIS DOCUMENT FOR THE JURY, PLEASE?

A A LETTER FROM THE NEW YORK OFFICE TO THE DIRECTOR OF THE FBI. IT'S DATED FEBRUARY 13, 1970, CONCERNING, "SOCIALIST WORKERS PARTY, DISRUPTION PROGRAM," AND IT CONCERNS A LEAFLET WHICH THE NEW YORK OFFICE DISSEMINATED TO CAUSE DISRUPTION IN THE NEW MOBILIZATION COMMITTEE.

Q SIR, IF YOU WOULD LOOK AT THE LOWER LEFT-HAND CORNER OF THE DOCUMENT, WHERE THE THREE INITIALS APPEAR, CAPITAL-LETTERED INITIALS; DO YOU SEE THAT?

A YES.

Q WHAT IS THE SIGNIFICANCE OF THE TYPEWRITTEN INITIALS AT THAT LOCATION?

A THAT WOULD INDICATE THE INDIVIDUAL WHO DICTATED THE DOCUMENT.

Q AND WHAT ARE THOSE INITIALS, SIR?

A "WMS."

Q DO YOU HAVE ANY PERSONAL KNOWLEDGE AS TO THE NAME OF THE PERSON WHOSE INITIALS ARE "WMS"?

A I HAVEN'T THE SLIGHTEST IDEA.

Q WHAT OFFICE WOULD THIS PERSON BE CONNECTED WITH?

A THE NEW YORK OFFICE OF THE FBI.

Q WHEN THIS DOCUMENT ARRIVED IN FBI HEADQUARTERS WAS IT CIRCULATED TO OR ROUTED TO -- STRIKE THAT.

I HAVE ANOTHER QUESTION. I'M SORRY.

WHAT WAS YOUR POSITION ON THE DATE OF THIS DOCUMENT, FEBRUARY 13, 1970?

A FEBRUARY 13, 1970, I WAS STILL SECTION CHIEF OF THE INTERNAL SECURITY SECTION.

Q WAS THIS DOCUMENT, TO THE BEST OF YOUR KNOWLEDGE, FROM YOUR EXAMINATION OF IT, ROUTED TO YOUR SECTION?

A YES, IT WAS.

Q IS THERE ANY INDICATION ON THAT DOCUMENT THAT YOU SAW IT, PERSONALLY?

A NO, SIR.

Q THERE IS SOME HANDWRITING BELOW THE DATE ON THE DOCUMENT, THE UPPER RIGHT-HAND CORNER?

A YES.

Q CAN YOU DECIPHER THAT HANDWRITING, SIR?

A YES.

IT'S AN AGENT SUPERVISOR. NAME OF THE AGENT SUPERVISOR, CZARNECKI, C-Z-A-R-N-E-C-K-I, WHO WORKED IN THE INTERNAL SECURITY SECTION.

Q AND WHAT'S THE SIGNIFICANCE OF HIS NAME BEING IN THAT LOCATION?

A HE PROBABLY HAD RESPONSIBILITY FOR THAT PHASE OF THE PROGRAM AND IT WAS ROUTED TO HIM TO INITIAL TO INDICATE THAT HE HAD FULFILLED ANY RESPONSIBILITY REQUIRED IN CONNECTION WITH THE DOCUMENT.

Q NOW, LOOKING AT THE ATTACHMENT OT THE DOCUMENT, SIR, DO YOU HAVE ANY RECOLLECTION OF HAVING SEEN THIS DOCUMENT AT THE TIME IT ARRIVED IN FBI HEADQUARTERS?

A NO, I DO NOT.

Q TO THE BEST OF YOUR RECOLLECTION, WHEN DID YOU FIRST SEE THIS DOCUMENT, INCLUDING THE ATTACHMENT?

A I BELIEVE IT WAS JUST RECENTLY, IN CONNECTION WITH GOING OVER SOME OF THESE IN PREPARATION FOR TRIAL.

Q FINALLY, MR. BRENNAN, YOU TESTIFIED THAT REGARDING THE WOMEN'S STRIKE FOR PEACE THAT IT WAS YOUR RECOLLECTION THAT THE BASIS FOR THE INVESTIGATION WAS POSSIBLE COMMUNIST INFILTRATION; IS THAT CORRECT?

A I BELIEVE SO.

Q WHAT IS THE SIGNIFICANCE, IF ANY, TO THE QUESTION OF THE WOMEN'S STRIKE FOR PEACE POSSIBLY BEING INFILTRATED BY COMMUNIST PARTY MEMBERS?

A I DON'T UNDERSTAND THE QUESTION.

Q WHAT IS THE SIGNIFICANCE TO THE FBI -- WAS THE SIGNIFICANCE TO THE FBI REGARDING THE ISSUE OF WHETHER THE WOMEN'S STRIKE FOR PEACE WAS INFILTRATED BY COMMUNIST PARTY MEMBERS?

A WELL, IT GOT RIGHT TO THE HEART OF ONE OF THE FBI'S PRIMARY RESPONSIBILITIES.

PRESIDENT ROOSEVELT, BY EXECUTIVE ORDER DATED IN 1939, GAVE THE FBI THE RESPONSIBILITY FOR THE CORRELATION

OCCURRING?

A IF IT DID IN FACT OCCUR THEN HE WOULD HAVE A PROBLEM OF TRYING TO MAKE A DETERMINATION AS TO HOW INFLUENTIAL THE COMMUNIST INFILTRATION WAS, AND THE EXTENT OR DEGREE TO WHICH THE COMMUNISTS IN THE ORGANIZATION MIGHT BE ABLE TO USE IT TO FURTHER THEIR OWN PARTICULAR AIMS AND GOALS AND POLICIES FOR PROPAGANDA PURPOSES.

Q AND WHY, SIR, WAS THE FBI CONCERNED ABOUT THE ACTIVITY OF THE COMMUNIST PARTY IN THE UNITED STATES?

A BECAUSE IT HAS DEFINITELY BEEN SHOWN THAT THE COMMUNIST PARTY OF THE UNITED STATES IS A DIRECT APPENDAGE OF THE SOVIET UNION, AND FOR YEARS THAT THEY HAVE TAKEN THIS DIRECTION AND CONTROL AND BEEN FINANCIALLY SUPPORTED BY THE SOVIETS.

MR. WHITE: THANK YOU, SIR.

I HAVE NO FURTHER QUESTIONS.

THE COURT: REDIRECT EXAMINATION.

MS. BONN: I JUST HAVE ONE QUESTION, YOUR HONOR.

FURTHER CROSS EXAMINATION

BY MS. BONN:

Q MR. BRENNAN, I'M LAURA BONN, REPRESENTING THE DISTRICT OF COLUMBIA AND THE DISTRICT OF COLUMBIA DEFENDANTS, AND I ONLY HAVE ONE QUESTION.

WAS THE METROPOLITAN POLICE DEPARTMENT INVOLVED AT ALL WITH THE FBI COINTEL PROJECT?

A NO.

Q I HAVE TWO QUESTIONS.

WAS THE METROPOLITAN POLICE DEPARTMENT INVOLVED WITH ANY OF THE NEW LEFT PROJECTS OF THE FBI?

A NO.

MS. BONN: THANK YOU.

THE COURT: WILL YOUR EXAMINATION BE EXTENSIVE?

MS. PILSBURY: I DON'T THINK SO, YOUR HONOR, BUT IT WILL PROBABLY BE MORE THAN FIVE MINUTES.

THE COURT: ALL RIGHT.

IT WILL BE FIVE MINUTES.

MS. PILSBURY: I KNOW IT'S LATE, YOUR HONOR. WE'RE ALL TIRED.

REDIRECT EXAMINATION

BY MS. PILSBURY:

Q MR. BRENNAN, IS IT YOUR POSITION THAT YOU ARE NOT RESPONSIBLE FOR ACTS TAKEN BY YOUR SUBORDINATES IN YOUR BEHALF?

MR. WHITE: YOUR HONOR, I WOULD OBJECT TO THE QUESTION ON THE GROUNDS IT REACHES THE LEGAL ISSUE AT THE HEART OF THIS CASE.

THE COURT: THE OBJECTION IS OVERRULED.

THE WITNESS: I THINK IF THOSE SUBORDINATES, HAVING BEEN DELEGATED THE AUTHORITY TO ACT FOR ME, IN MY BEHALF, THEY WOULD HAVE BEEN RESPONSIBLE FOR THEIR OWN ACTIONS.

BY MS. PILSBURY:

Q SO, IN OTHER WORDS, WHEN SOMEBODY SIGNS A DOCUMENT IN YOUR NAME IN YOUR ABSENCE, YOU'RE TAKING THE POSITION THAT THEY DID SO WITHOUT YOUR AUTHORITY?

A OH, YES. THEY DID IT WITHOUT MY AUTHORITY.

Q AND DID YOU EVER REPRIMAND ANY OF THESE PEOPLE?

A NO.

THEY WERE GIVEN THE AUTHORITY TO SIGN FOR ME, AND IF THEY MADE ANY MISTAKES IN SIGNING THINGS FOR ME IN MY ABSENCE, THEY WOULD HAVE TO ANSWER FOR IT THEMSELVES.

Q OKAY.

THEN IN REFERENCE TO THE DOCUMENTS THAT YOU'VE SEEN HERE IN COURT TODAY --

A YES.

Q -- DID YOU SEE ANY DOCUMENTS WHICH DID NOT APPEAR TO YOU TO ACCURATELY REFLECT BUREAU POLICY IN REGARD TO COINTELPRO NEW LEFT, OR ANYTHING ELSE THAT THESE DOCUMENTS MIGHT HAVE REFERRED TO?

A IT SEEMED TO ME THAT THE DOCUMENTS I SAW --

MR. WHITE: YOUR HONOR, I OBJECT TO THE QUESTION AS CALLING FOR A CONCLUSION.

THE COURT: OVERRULED.

THE WITNESS: IT SEEMED TO ME THAT THE DOCUMENTS THAT I SAW REPRESENTED ACTIONS TAKEN, OR RECOMMENDATIONS, THAT WERE CONSISTENT WITH THE POLICY OF THE PROGRAM, AS IT

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., :

Plaintiffs, :

v. : CA No. 76-1326

JERRY WILSON, et al., :

Defendants. : Vol. 3

Washington, D. C.

December 7, 1981

The above-entitled matter came on for trial before the HONORABLE LOUIS F. OBERDORFER, United States District Court Judge, in Courtroom No. 3.

APPEARANCES:

On behalf of the Plaintiff:

DANIEL M. SCHEMBER, ESQ.
J. E. McNEIL, ESQ.
ANNE PILSBURY, ESQ.

On behalf of the Federal Defendants:

DAVID WHITE, ESQ.
DENNIS HOFFMAN, ESQ.

On behalf of the District of Columbia Defendants:

LAURA BONN, ESQ.
GEORGE BARCLAY, ESQ.

Official Reporter: Bruce W. Herzfeld

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
George R. Suter	857		949	
(on voir dire)	885			
(direct resumed)	894			
(By Mr. White)		934		
(By Mr. Barclay)		940		
Jack L. Acree	953			
Thomas I. Herlihy	973			
(By Mr. White)		1005		
(By Mr. Barclay)		1006		
Melvin A. Winkleman	1007		1051	
(By Mr. White)		1039		
(By Mr. Barclay)		1041		

EXHIBITS

(None)

to the intelligence division?

A. I was.

Q. During what time period or periods?

A. The first time period was from May of 1968 to December of 1970, and the second time period was in -- I'm not sure of the month -- from 1972 through 1975.

Q. During the first time period that you referred to, sometime in 1968 through 1970, how was the intelligence division organized?

A. Well, it was headed up by an inspector. I was a lieutenant, and then we had several sergeants, and investigators.

Q. Were there subunits within the division?

A. Yes.

Q. What were those units?

A. I don't remember exactly what the proper terminology was, whether it was the security information branch or the special officers branch. I believe those were the two that were in existence at that time.

Q. There were two subdivisions?

A. Yes.

Q. Which -- did you have responsibility for both subdivisions?

A. Yes. In an indirect way on the special officers branch -- there was a sergeant in charge of that.

Q. What was the mission of the security information branch?

A. Well, at the time that I came into the intelligence division, we were trying to begin to establish an organization which could gather information to assist the Chief of Police in making decisions on manpower allotment because of the times -- of the demonstrations. We had just gotten over the April riots, and during that time it was my understanding that they were not satisfied with the information which was being obtained.

Q. What information was it the responsibility of the security information unit to obtain?

A. To gather information on groups, demonstrations.

Q. What groups?

A. I can't name all of them, but --

Q. What categories of groups?

A. Well, we concentrated on groups that would create disorder.

Q. What do you mean by "disorder"?

A. Well, I would say anything that would require a more than usual police response.

Q. Are you referring to demonstrations?

A. Demonstrations, parades, sit-ins, building takeovers.

Q. Is a parade a matter that would require more

and there are circumstances a spontaneous sit-in was not a subversive activity?

A. I would say yes to that -- going back to my original example, a union activity which resulted in a sit-in, a spontaneous thing.

Q. Is it the purpose of a sit-in which makes it subversive or not subversive?

A. Well, I think that word, subversive, is -- I don't know how to describe it. What I took as the meaning of subversive might not be your interpretation.

Q. How did the security information unit carry out its responsibilities regarding subversive activities?

A. We concentrated on groups which by their numbers and by their activities became more known to us as time went on. To the best of my memory, 1968 was the beginning of a lot of those activities which we had never experienced before.

Q. Did the numbers of individuals involved in a group determine whether that group was subversive or not?

A. No, I would say that their goals would determine more than their numbers.

Q. And what goals would determine whether an organization was subversive or not?

A. I cannot be specific about any specific organization, whether I would consider one subversive

over another one. I just --

Q. Did you consider organizations active in opposing the war in Vietnam subversive organizations?

A. The war in Vietnam was an issue which was a nationwide issue. I always tried not to get involved in whether it was a -- something that I agreed with or disagreed with.

Q. Well, my question is a simple one. Did you consider the organizations involved actively in opposition to the war in Vietnam subversive organizations?

A. I would consider it that, yes.

MS. BONN: I would object. Unless these questions [illegible] to the policy of the Metropolitan Police Department, [illegible]r. Suter's personal conclusions about activities being [illegible]bversive or not is totally irrelevant to this case. [illegible]unsel hasn't established a foundation for Mr. Suter's [illegible]stifying as to the policies of the Metropolitan Police [illegible]partment.

THE COURT: The question was whether he considered [illegible]am War opponents subversive. The whole line of [illegible]ning may lead nowhere, but as long as he came that [illegible]think he is entitled to an answer to that question.

[illegible]S. BONN: Is he asking for a clarification of [illegible]r's personal opinion or the policy of the [illegible]tan Police Department?

the demonstration is going to be held, how long it's going to last. That would be what we would try to determine prior to the event taking place.

Q. And the purpose of obtaining that information was to determine -- was to inform the Chief of Police as to the need for officers along the march route or whatever response uniformed officers would be required to take?

A. Yes, sir.

Q. What methods did you use to acquire that information concerning upcoming demonstrations?

A. Well, as I testified previously, we would contact the bus companies, if it was a large demonstration where people were coming from all over the country, and get a determination from them.

We had organizations locally where we would put undercover men and informants to attend meetings, to try to obtain their plans.

Q. Did you ever consult the permits obtained by these organizations?

A. We would get copies of any permits that we issued, yes, if they were issued.

Q. Were the permits and calls to the bus companies sufficient to provide the section the information that it needed?

A. It would give you the numbers that they anticipated.

not strictly confined to demonstrations, parades, and things of that nature.

Q. Did you use undercover officers and informants to obtain information on these other activities?

A. Yes.

Q. What was the purpose of obtaining this other information?

A. Well, I would think if an organization had just been formed, -- and in those times organizations were forming and not being successful and disappearing more rapidly than we could keep up with them. A lot of times two people would meet and call themselves an organization, and try to get something going, and couldn't, and disband.

Q. Why would you want to know that?

A. Well, we were just trying to keep abreast of everything that was occurring. If we had an informant or an undercover man in one organization he might report to us that somebody else was having meetings, making plans to do something other than what that organization was doing.

Q. How did you determine what organizations to use undercover officers and informants in?

A. There was no set policy. We just made that determination at the time that we did it.

Q. When you were making such determinations, what

Q. Do you recall an instance in which documents concerning or, rather, financial documents concerning an antiwar organizations were obtained by the security information section?

A. I don't remember any specific instance, no.

Q. Other than using undercover officers and informants and calling the bus companies, what techniques did the security information section use to gather information?

A. On occasion we used electronic surveillance.

Q. What kind of electronic surveillance?

A. We used body worn transmitters that we would place on an undercover man or informant assigned to a location.

Q. Any other kind of electronic surveillance?

A. We used transmitters.

Q. Was that different? You mentioned body worn transmitters and transmitters.

A. Well, transmitters placed in a location other than on a human being.

Q. What locations?

MS. BONN: Your Honor, I'm going to object to that question and ask to approach the bench.

MR. SCHEMBER: My question, Your Honor, is --

THE COURT: I assume that this witness understands that there are certain privileges that attach to him about --

MS. BONN: May we approach the bench, Your Honor?

MR. SCHEMBER: Your Honor, I could rephrase my question to ask what kinds of locations.

THE COURT: Would that trouble you?

MS. BONN: Yes, Your Honor.

THE COURT: Okay. Well, come to the bench.

(At the bench.)

THE COURT: I think you underestimate your witness.

MS. BONN: I can't afford, quite frankly, to take that chance.

THE COURT: You overestimate the risk.

MS. BONN: Perhaps I do, but I would object to any questions that are not specific with respect to location of transmitters ---

(In open court.)

THE COURT: Excuse the jury.

(Whereupon, the jury left the courtroom.)

(At the bench.)

MS. BONN: I believe unless the question is specific -- the question was too general. It asked for locations of transmitters.

THE COURT: Kinds of places?

MS. BONN: I don't recall if it specified kinds of places.

THE COURT: I think they just rephrased the question.

MR. SCHEMBER: That is how I rephrased the question.

MS. BONN: Okay. I suppose my objection was to the original question.

THE COURT: He rephrased the question. While we have this here, let's get the ground rules. You can run, but you can't hide. If there are things here that relate to what are arguably violations of Plaintiffs' Constitutional rights, we have to get it down somewhere, even though we don't give it to the jury right away. I can have a voir dire and have him up here at the bench and ask him questions on voir dire, and see whether that will cause you grief and bring the jury back. That is why I excused the jury, but I won't let you eliminate this.

MS. BONN: I suppose the scope of the inquiry with respect to locations would cause objections from the District of Columbia, specific locations. Types of premises, a response could be ---

THE COURT: Suppose it's on one of the Plaintiffs' premises? What are we going to do then? The jury isn't supposed to hear that? Suppose it's in one of these Plaintiffs' bedrooms? That has to be suppressed?

MS. BONN: No, Your Honor, that doesn't. But

anything more general I would have to say would have to be unless it directly affected the Plaintiff.

THE COURT: How will he find that out?

MS. BONN: I suppose if he asked specifically if the premises of Plaintiff Bloom's home was --

THE COURT: This is a little more general than that. They are talking about places that these people frequented on their particular political business.

MS. BONN: I understand, and then we run into the problem because the Metropolitan Police Department, quite frankly, did not have a widespread use of electronic surveillance or widespread use of informants.

THE COURT: So he could be able to answer this question at the bench and sort of rehearse it before we let it go public, if it has to go public? Have an opportunity to consider it?

MS. BONN: That is fine, Your Honor.

THE COURT: Why don't we conduct this part of the examination up here as a voir dire, and after I rule on it, repeat it before the jury.

Mr. Suter, would you come to the bench, please.

(The witness went to the bench.)

THE COURT: Mr. Suter, I have to talk a tightrope here between getting in to the jury the things that they need to know and at the same time protecting police methods,

informant identities, and things like that.

THE WITNESS: Yes, sir.

THE COURT: It is not easy. I think what I will do -- you are the first person we have had this problem with -- I think I will let the questions be asked of you sort of in an abbreviated fashion here at the bench, and for the moment, after I finish talking, we will put your answers under seal for the moment, and then rule on any objections, and then go through the exercise again in the clear.

I would like you, Ms. Bonn, -- and maybe you haven't done this with Mr. Suter -- counsel with each of your witnesses about the ground rules that we have developed, not that we have developed them yet.

Go ahead, Mr. Schember.

EXAMINATION ON VOIR DIRE

BY MR. SCHEMBER:

Q. Mr. Suter, what were the kinds of locations where transmitters were placed, other than on bodies?

A. Mainly when we used electronic surveillance it was with one informant, at their home address where they lived.

Q. Was more than one transmitter placed in the home?

A. Yes.

Q. Did you have a customary practice as to the number

of transmitters that you would place in a home?

A. No. That would be judged by the area in which we were trying to record the conversations.

Q. Was the objection to cover the entire home?

A. In one instance, yes.

Q. In other instances, no?

A. Right, where you would only cover one room as opposed to the entire house or apartment, whatever it was.

Q. Did you utilize this technique in hopes of obtaining information concerning anti Vietnam War organizations?

A. Yes.

Q. Did you use multiple transmitters in a single location for that purpose?

A. Yes.

Q. What were the organizations whose plans you sought to learn that were antiwar organizations through use of this technique?

A. I can't be specific on that. It has been so long ago, I don't remember.

Q. I want to show you this document.

MR. SCHEMBER: Counsel, I am referring to Summary B.

BY MR. SCHEMBER:

Q. Would you take a look at that document, briefly.

A. It is a terrible copy.

THE COURT: Excuse me, just a minute.

BY MR. SCHEMBER:

Q. Have you had a chance to look at that, Mr. Suter?

A. On page 8 -- do you want me to read the entire thing or --

Q. Are you familiar with what this document is?

A. Not really. I know there was an investigation conducted, and I assume this is a portion of the written report.

Q. Would you look at the page that is marked in handwriting as page 10.

Would you look at the first full paragraph on that page. Does that paragraph refresh your recollection as to the names of the antiwar organizations that were overheard on an electronic surveillance?

A. Well, I can read what is written here as the Washington Mobilization Committee, the --

THE COURT: Does it fresh your recollection?

THE WITNESS: I heard of all the organizations, yes, sir. I don't specifically remember which organizations we were attempting to monitor with this location. But I have heard of all the organizations specified.

BY MR. SCHEMBER:

Q. Was the Washington Mobilization Committee an organization that you were interested in obtaining information

from through electronic surveillance?

A. Yes.

Q. Do you recall whether this instance was one in which several transmitters were used in a single location?

A. Yes.

Q. Several transmitters were used?

A. Yes, yes.

Q. Was the entire house or apartment monitored then?

A. Yes. Might I clarify that there were transmitters and hard wire microphones utilized?

Q. What is a hard wire microphone?

A. Where you wire the microphone directly to the recorder from one location to the other without interruption.

Q. Was the monitoring post nearby?

A. Yes.

Q. During what time period was this monitoring conducted?

A. I don't remember.

Q. Would you take a look at the first page of that document that I have handed you, the printing at the top. Does that refresh your recollection as to the time period?

A. Does that say December '68 to February of '69?

Q. What does it appear to you to say?

A. It's a very poor copy, but that is what it appears to me.

Q. Does that refresh your recollection as to the time period?

A. I would say it's an accurate --

THE COURT: What was the ending date?

THE WITNESS: February of 1969.

BY MR. SCHEMBER:

Q. What, specifically, were the procedures used to set up and implement this electronic surveillance? Can you tell me step by step?

A. Well, step by step, the first thing we would do would be to have the informant obtain a location, and at that time we would go into the location, make a determination where we thought meetings would be held, and any activity that we would be interested in, and from that point we would make the installation, after obtaining a location suitable for monitoring.

Q. What was the procedure for implementing the monitoring once it was set up and ready to go?

A. Speaking from the Police Department's angle?

Q. Yes.

A. We would pick men to monitor the location and in that specific instance we picked, I believe, two individuals that lived at the location and never left it.

Q. Did you inform the monitors whose apartment it

was or whom that they were monitoring?

A. Yes.

Q. Did the monitors know that person personally?

A. I would say to the best of my memory in this specific instance that they had never personally met them.

Q. Did you give the monitors instructions to monitor conversations only when they knew the consenting person was present?

A. Well, I would say, in a house, which this was, it would be difficult to make that --

THE COURT: The answer to that is no?

THE WITNESS: No.

BY MR. SCHEMBER:

Q. Was the monitoring done on a continuous basis?

A. Yes.

Q. 24 hours a day?

A. Yes.

Q. Were the monitors at this location able to determine -- able to see the persons coming and going from the place that was being monitored?

A. I don't know.

Q. Was it your policy or practice in general when setting up these types of surveillances to make sure that a monitoring post was selected where visual observation of the place monitored could occur?

A. That would be an ideal situation, but it doesn't always occur.

Q. You don't recall whether that occurred in this instance?

A. No, I don't.

Q. What was your understanding at the time as to the legality of this type of electronic surveillance?

A. It was my understanding -- and I was never that familiar to it -- as to a one-party consent -- where we had the permission of the informant to do the monitoring, and they knew we were doing it, and that is what we were operating under.

Q. Was it your belief that so long as the occupant of a house or apartment consented to the installation, it was not necessary for the occupant to be present and participate in the conversation at the time of monitoring?

MS. BONN: Again, I will place an objection. When he says, "your belief," is he talking about Mr. Suter as an individual or as a representative of the Police Department?

THE COURT: Ask him both ways.

MS. BONN: Would you repeat the question.

BY MR. SCHEMBER:

Q. Was it your personal belief at the time that it was legally sufficient for the occupant of a house or

apartment to consent to the surveillance, and that it didn't matter whether the occupant was present at all times during the surveillance?

A. That was my interpretation officially and personally.

Q. What was that interpretation based on?

A. I guess my answer with that would be just general knowledge. I cannot be specific on it.

Q. Were you aware of statutes pertaining to electronic surveillance?

A. I was not that familiar with them.

Q. Do you know that they existed?

A. At that time, yes.

Q. Had you read them?

A. Yes.

Q. Was it your interpretation upon reading them that this type of electronic surveillance was legal?

A. I thought it was, yes.

Q. Were conversations overheard recorded on tape?

A. Yes.

Q. What happened to the tapes after they were recorded?

A. Well, from what I read of this and refreshing my memory, there were two copies made. One went to the United States Secret Service, and one went to us.

Q. What did you do with your copy?

A. Take it back to the office, review it, obtain what information we thought was of value to us from it, and then destroy it.

THE COURT: Does that about finish this line of questioning?

MR. SCHEMBER: There are further questions.

THE COURT: This is the frame of reference?

MR. SCHEMBER: This is the frame of reference, the nature of the inquiry.

THE COURT: Now, I don't know whether you thought you should be objecting in this period. Do you have any problems with that?

MS. BONN: I didn't interrupt because I thought we would get it all out on the record.

THE COURT: Sure.

MS. BONN: I believe I don't have any specific objection. My objection with respect to asking Mr. Suter for his personal --

THE COURT: That has nothing to do with security. We can do that in open court. As far as you are concerned, this doesn't tread on the interests that you are commissioned to protect?

MS. BONN: No.

MR. SCHEMBER: I would forego such questions if Mr. Suter cares to abandon a good faith defense in

this case.

MS. BONN: No, absolutely not.

THE COURT: You can resume the stand, Mr. Suter.

(In open court.)

THE COURT: I am not going to keep this under seal, Ms. Bonn.

MS. BONN: I assume --

THE COURT: I am not going to seal it.

(Before the jury.)

DIRECT EXAMINATION (Continued)

BY MR. SCHEMBER:

Q. Mr. Suter, what were the kinds of locations where you would install the transmitters?

A. Informants' homes.

Q. And what was -- what types of informants were customarily used for this purpose?

MS. BONN: I'm going to object.

THE COURT: The objection is sustained.

BY MR. SCHEMBER:

Q. What was the purpose of utilizing this technique?

A. To establish a location where the informant could invite persons that they were familiar with in the organizations that we were interested in, to use their house or apartment as a place to meet, and to establish us an opportunity to monitor.

Q. Do recall an instance in which this technique was used to gather information concerning an organization opposed to the war in Vietnam?

A. Yes.

Q. Was the informant in that instance a person who posed as a member or associate or sympathetic person with respect to that organizations?

MS. BONN: Your Honor, I am going to object.

THE COURT: Mr. Schember, you'll have to confine yourself to what you asked in voir dire. Otherwise, that doesn't do any good. Just stick to that.

BY MR. SCHEMBER:

Q. Was an antiwar organization or meetings of an antiwar organization overheard on the instance that you recall?

A. Yes.

Q. Can you tell me the step-by-step procedures that you used to install and implement this monitoring?

THE COURT: Do one at a time. Do install.

THE WITNESS: Do you want me to go through the entire scenario as to --

THE COURT: Yes.

THE WITNESS -- where we would start?

Firstly, we would obtain a location for the informant to rent. After that was accomplished, then we

would obtain a location that we could use as monitoring post as close as possible. After that, then we would go into the location that had been obtained and make a predetermination as to what we thought would be the proper location to get the best coverage. And at that point we would either use a transmitter or a hard wire microphone.

BY MR. SCHEMBER:

Q. In the instance that you recall, was more than one transmitter used?

A. Yes.

Q. How many transmitters were used?

A. I believe there were two.

Q. Where were they placed?

A. I really can't remember specifically where they were, but they were in locations where we could not put a microphone with hard wire. I think one of them was on the first floor and one was on the second floor.

Q. And were there hard wire microphones used as well?

A. Yes.

Q. What is a hard wire microphone?

A. Where you would place a microphone with wires leading out of it directly into the recording equipment with no break in between.

Q. How many hard wire microphones were used?

A. I can't remember.

Q. Was the surveillance designed to pick up conversations anywhere on these premises?

A. We tried to be as complete as we could, yes.

Q. Could you describe the procedures used to implement the monitoring once it was set up?

A. Once all of this was established, then we would assign -- and in this particular case, we assigned two men to the listening post -- and they lived there and stayed there.

Q. Did those men know the identity of the person who had consented to the installation of the transmitters?

A. Yes.

Q. Did they know that person personally by sight or voice?

A. I don't remember, but at that time I do not think they did.

Q. Was there any way that the monitors could know whether or not the consenting person was present at the time any monitoring occurred?

A. No.

Q. Were the monitors given any instructions as to when they should turn on the monitoring or turn off the monitoring?

A. I don't remember, but I would say that we monitored

them 24 hours a day, as long as there was activity in the building.

Q. Could the monitors visually see who had entered or left the premises of the monitored place?

A. I don't believe so, in this instance.

Q. Were conversations monitored in this instance?

A. Yes.

Q. Were conversations held during meetings of an antiwar organization heard through this incident that you're referring to?

A. Being specific, I cannot remember. But my answer would be that I would imagine so, yes.

Q. Do you remember the name of the organization?

A. The thing that we were primarily interested in at that time was the New Mobilization.

Q. Was a meeting of that organization overheard through this instance?

A. I don't remember.

Q. Mr. Suter, I've placed before you a document.

MR. SCHEMBER: Counsel, this is incident summary

BY MR. SCHEMBER:

Q. Do you know what that document is?

A. It's a portion of a report which was prepared regarding the specific activity.

A. Both officially and personally, it was my interpretation that we needed a one-party consent. As long as we had permission of the informant to do it, it was my interpretation that it was legal.

Q. In your personal view, was it necessary for the informant to be present at all times when conversations were being monitored?

A. There again, I'd say that it was my feeling that if we had permission of the informant to do it, we felt or I felt that we were legally pursuing that aspect. As to whether an informant was there personally each and every time, I would say that it wouldn't have been possible to be at every location.

Q Well, my question was was it your understanding that the presence of the consenting party was irrelevant as to whether it was legal or not, so long as they had consented --

A. That was my feeling, yes.

Q. Mr. Suter, who participated in the decisions to establish the electronic surveillance which resulted in the overhearing of the Washington Mobilization Committee during this time period?

A. In this particular instance, it was the Assistant Chief John S. Hughes, Metropolitan Police

A. Yes, sir, this was the policy of the Chief of Police, who at that time was Robert B. Murray.

Q. And this policy was in effect until it was rescinded by Chief Wilson in March of 1971?

A. According to these documents, yes.

Q. In 1968 through 1970 what was the policy of the Department regarding the use of wiretaps and bugs?

A. According to this General Order, the Chief of Police was opposed to it, and stated that if anyone uses wiretapping or bugging, it's against his policy and my wishes, and if discovered, will be punished.

Q. So when you and Inspector Herlihy and Mr. Acree implemented these electronic surveillances with CIA equipment, you were acting contrary to Department policy, were you not?

A. I don't think I'd classify it as acting contrary to Department policy. The Assistant Chief was aware of it. But I'm not saying that the Assistant Chief was aware of it every time. There were instances when he was aware of it.

Q. Well, if the Assistant Chief participated in the installation and use of these monitoring devices from the CIA, wasn't the Assistant Chief also violating Department policy in effect at that time?

A. Yes, sir.

MS. BONN: I would object to that question.

THE COURT: Sustained.

BY MR. SCHEMBER:

Q. Mr. Suter, you testified earlier that if informants or undercover officers obtained such things as financial documents, address books, contributor lists, mailing lists, you would be interested in reviewing them. Was that your testimony?

A. Yes, sir.

Q. How did undercover officers and informants obtain documents of that kind?

MS. BONN: I'm going to object. I think we have been over this series of questions, and they have been answered already.

THE COURT: Yes. The objection is sustained.

BY MR. SCHEMBER:

Q. Mr. Suter, are you familiar with the name Charles J. Marcum?

A. Yes, sir.

Q. Did Mr. Marcum have another name?

A. Mike.

Q. How do you know Mike Marcum?

A. He worked for me in the intelligence division.

Q. What was his assignment?

A. When he first came, as an undercover man.

Q. And what, specifically, was his assignment as an undercover officer?

A. I believe we used him in the antiwar groups.

Q. Did you provide him any training before you used him as an undercover officer?

A. No, sir.

Q. During what time period was he an undercover officer assigned to infiltrate antiwar groups?

A. I don't remember.

Q. Do you recall an instance where Mike Marcum told you that he had obtained a metal box from an antiwar organization located at 1029 Vermont Avenue, N.W.?

A. Yes, sir.

Q. Did you see the box?

A. Yes.

Q. Did he tell you how he had obtained the box?

A. I believe at the time that I met him to pick up the box, that he had told me that he had gotten it from within the office of the organization.

Q. Had he obtained it in the daytime or the nighttime?

A. When I met him, it was nighttime.

Q. Had he just obtained the box?

A. Yes.

Q. Approximately what time of night was that?

A. I really don't remember. I would say sometime

Q. Was it highly unusual?

THE COURT: You wouldn't classify it as usual?

THE WITNESS: As usual, no, not a usual occurrence.

BY MR. SCHEMBER:

Q. Was it a highly unusual occurrence?

A. No. We got documents here and there, but it was never on a daily basis or anything like that.

Q. Was it customary for the intelligence division to obtain documents in that manner, entering an office building late in the night and removing --

A. No.

Q. Mr. Suter, during the course of your tenure as a lieutenant in the intelligence division, 1968 through 1970, did you have occasion to exchange information with the FBI?

A. Yes, sir.

Q. What kind of information did you exchange with the FBI?

A. If I would get information which I felt would assist them, I would pass it on to them.

Q. What information was the FBI interested in, to your knowledge?

A. Well, they basically were interested in the same thing that we were. They were required to keep reporting on activities of groups, the same as we were.

Q. To your knowledge, was the FBI interested in address books?

A. Well, I'd say the same thing. If we could get something that I thought they might be interested in, I'd pass it on to them.

Q. Was that such an item, address books?

A. I don't remember any specific address book to speak of, but I would put it in the classification that if I got one from somebody in the hierarchy of one of these organizations, if I felt that I could pass it on to them and assist them, I would do it. I worked with them on a regular basis.

Q. Would financial documents of an antiwar organization also fall into that category?

A. Sure.

Q. In your dealings with the FBI, did you deal with FBI Headquarters or the Washington Field Office or some other unit?

A. I dealt with the Washington Field Office, those particular squads that were responsible for the same areas that I was responsible for.

Q. And who were the members of those squads that you dealt with?

A. Some names which come back to me -- I can't remember them all -- John Palmer, Bob Quigley, Joe Mahoney,

Courtland Jones, Paul Morrison.

Q. Paul who?

A. Paul Morrison.

Q. Did you know Gerald T. Grimaldi?

A. Yes.

Q. Did you know him as a member of one of the squads that you dealt with?

A. Yes, sir.

Q. Was Courtland Jones a member of one of those squads?

A. Courtland Jones was a supervisor. I don't know exactly what his title was, but he was over --

Q. Was he a superior of John Palmer's?

A. Yes. To the best of my knowledge, I believe he was.

Q. And was John Palmer a superior to Joe Mahoney and Gerald Grimaldi?

A. He was classified as a supervisor, yes. Whether that put him in rank over top of them, I don't know.

Q. Did the FBI provide you information?

A. Yes.

Q. What was the nature of the information that you customarily received from the FBI?

A. Well, we both had informants in organizations. If we reported something and I gave them a report of something

that we had obtained; and if they got a report and they felt that we should have it, they would give it to us.

Q. Did you ever receive information from the FBI that you knew had been obtained by the FBI through a wiretap?

A. Not that I --

MR. WHITE: I would object to the form of the question in that it assumes there was some information given, and it's only a question as to whether he knew it or not.

THE COURT: Go by those questions a drop at a time.

BY MR. SCHEMBER:

Q. Did you know of any wiretaps that the FBI had been conducting on groups that were of interest to you?

A. I can't really remember any specific information that I ever received that I thought came from a wiretap.

Q. From the FBI?

A. Right.

Q. Mr. Suter, did the Metropolitan Police Department and specifically the intelligence division receive guidance or instructions from White House officials regarding activities that you could do that would assist the White House or be of interest to the White House?

A. No, sir.

say, adverse feelings towards the demonstrators? For example, they would be in disagreement with or maybe even hostile to the demonstrators?

A. Many, many times.

Q. Would the permits -- where that sort of circumstance might occur, would the permits or the applications for the permits provide a warning of a possibility of conflict from other groups who were not associated with the ones who wanted to sponsor the demonstration?

A. I don't believe I ever saw one like that.

Q. Now, sir, during the time you were on the intelligence division on the first occasion, May of '68 to December of 1970, did the intelligence division have, or any part of the intelligence division have,a specific function to control the demonstration or to control the traffic or have any physical responsibility in connection with the demonstration?

A. No, we had no responsibility such as that. Our main responsibility was to report the facts that we could find to the Chief of Police, so he could make a judgment on what we would need as far as manpower.

Q. Manpower being the police force?

A. That's correct.

MR. WHITE: I have no further questions. Thank you, sir.

THE COURT: Ms. Bonn.

CROSS EXAMINATION

BY MS. BONN:

Q. Mr. Suter, I believe you testified that the years of 1968 through 1970 were the years that you were in the intelligence division, is that correct?

A. Yes, ma'am.

Q. The intelligence division is or was divided into three different subsections, was it not?

A. Yes, ma'am.

Q. Was the security information section one of the subsections?

A. Yes, it was.

Q. And when we speak about the intelligence division, we're talking about the security information section, is that correct?

A. Yes, ma'am.

Q. Another section was organized crime --

A. Yes, ma'am.

Q. -- is that correct? And what does that involve?

A. During that period of time, that specific section was written into the order, but was not implemented. It had no manpower.

Q. And the third section would be the special officer section, is that correct?

A. Yes.

Q. Was one of the primary responsibilities of the intelligence division to collect and catalogue information on groups involved in demonstrations?

A. Yes.

Q. Do you recall if that specific duty was contained in a General Order?

A. Yes, it was.

Q. Did you assist in writing or preparing the General Order?

A. Whenever the Order was amended or changed, they would send us a draft asking for our comments. We would make our comments and that would be incorporated into the finished product.

Q. You were a captain in the intelligence division, were you not?

A. No, ma'am, I was a lieutenant, on my first assignment.

Q. Between 1968 and 1970 were you a lieutenant?

A. Yes, ma'am.

Q. And was it your understanding that one of the responsibilities of your division was to collect and catalogue information on demonstrator groups?

A. Yes, ma'am.

Q. Was this all demonstrator groups?

A. We tried to be as good as we could be, but I'm sure there were many many times that we did not have any information on certain groups that --

Q. If the Girl Scouts were having a demonstration down Pennsylvania Avenue, would you attempt to find out how many were going to attend, where the demonstration was going to be, how they were going to be transported?

A. No.

Q. What was the focus, then, of the demonstrator groups that you were looking at during 1968 and 1970?

A. We were primarily focusing on ones that we felt -- and again when I say "we", I'm talking about the intelligence division -- those ones that we thought would be disruptive and create a problem within the city.

Q. When you talk about a problem within the city, does that mean a stopping of traffic along major arteries of the city?

A. That's correct. That would be one instance.

Q. Would that be the responsibility of the Metropolitan Police Department to handle that kind of problem?

A. Yes, it would.

Q. Would it possibly be sit-ins in front of agencies of either the Metropolitan Police Department or the Federal Government?

A. Yes, ma'am.

Q. Who was your superior, your immediate superior?

A. Inspector Thomas I. Herlihy.

Q. And was there someone over Inspector Herlihy that he had to report to, do you know?

A. Assistant Chief John S. Hughes.

Q. And was there someone over Assistant Chief John Hughes that he had to report to?

A. To the Chief of Police.

Q. And was that Jerry Wilson at the time?

A. Yes, ma'ma.

Q. Directing your attention to what Plaintiffs' counsel has showed you before as Exhibit 72, tab E in front of you --

A. Yes, ma'am.

Q. -- is that the General Order No. 5?

A. Yes, it is.

Q. What was the date of that General Order?

A. May the 11th, 1964.

Q. Were you in the intelligence division in 1964?

A. No, ma'am.

Q. Was there an intelligence division in 1964?

A. I don't believe -- there was a unit in the Department that had basically the same type of responsibility, but I don't believe in 1964 that it was called the intelligence division.

Q. Who signed that General Order, Exhibit No. 72?

A. Robert B. Murray.

Q. Was Robert Murray the Chief of Police when you were in the intelligence division at any time?

A. No, ma'am.

Q. The electronic surveillance that you testified to in your direct examination occurred between the years of 1968 to 1969, did it not?

A. '68 through '70, I believe.

Q. Through '70?

A. Yes.

Q. And the Chief of Police was Jerry Wilson, was he not?

A. Yes, ma'am.

Q. Did you brief Chief Hughes on any of the plans for electronic surveillance during the years of 1968 through 1970?

A. Some of them, yes.

Q. Could you say with certainty that at least on one or two occasions he knew of electronic surveillances that you were involved in?

A. Yes.

Q. Do you know if he briefed Chief Wilson on these electronic surveillances?

A. No, I don't.

Q. Would this be information, again, on demonstrator groups?

A. Yes, demonstrator groups and individuals involved.

Q. Were you at all involved in their COINTELPRO - New Left program?

A. Not knowingly, no. I don't believe I ever was involved in that.

MS. BONN: I have no further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. SCHEMBER:

Q. Mr. Suter, you testified that a permit would not indicate the possibility that a traffic artery might be disrupted by a demonstration, did you not?

A. Yes, sir.

Q. Was it customary when a parade was held down a street that the street would be closed to traffic?

A. Yes.

Q. And in that sense, the artery would be disrupted from its normal use?

A. Yes, sir.

Q. Now, is that what you were referring to when you said that a permit would not indicate that type of disruption of the artery?

A. No. I was referring to a group sitting down in the middle of Pennsylvania Avenue, for example, in front of the White House, and form a line all the way across Pennsylvania Avenue and just sit down and refuse to leave when ordered to do so.

Q. And was that the type of information that you said wasn't available through permits?

A. Well, I don't think if they put on their parade permit application that they were going to disrupt traffic that the permit would be issued.

Q. And that's what you mean by a disruption?

A. That's right. Where they're going to disrupt traffic other than a normal parade would disrupt it.

Q. Mr. Suter, at any time during your tenure in the intelligence division from 1968 to 1970, did you receive any information that any of the Plaintiffs planned any disruption of the kind that you're referring to?

A. I do not remember any specific item regarding the Plaintiffs.

Q. In your information that you maintained at the intelligence division, did you separate the information according to category of groups, groups that engage in disruption and groups that don't engage in disruption?

A. No, sir.

Q. Did you keep track of which antiwar organizations

had been involved in disruptions and which ones had not?

A. We would place a memorandum in our file concerning that organization if we had gathered some information.

Q. And if an antiwar organization had not engaged in disruption, would you instruct your undercover officers and informants to remove themselves from that organization?

A. If I felt that the organization which they were active in was not one that participated in that type of demonstrator or activities, and I felt it was a total waste of time, I would pull them out and put them someplace else.

Q. But you were interested in information other than upcoming plans for demonstrations, were you not?

A. I think basically that's what we were interested in as to what was going to occur in the city.

Q. Did you withdraw your special employees and undercover officers from the Washington Mobilization Committee at any time?

A. Not that I can remember.

Q. Did you withdraw them from the New Mobilization Committee?

A. I don't remember.

Q. Mr. Suter, I believe you testified in response to questioning by Ms. Bonn that attendance at open meetings and rallies were two means that undercover officers and informants obtained information about an organization,

is that correct?

A. Yes, sir.

Q. Did they also attend private meetings?

A. Yes, sir.

Q. Did they also work in the office?

A. Yes, sir.

Q. Did they also seek to obtain positions of responsibility within the organization?

A. We instructed them along those lines, yes, sir.

Q. You testified that Chief Murray was not Chief of Police at the time his no bugging order was issued -- excuse me. You testified that Chief Murray was not the Chief of Police at the time that you were in the intelligence division, is that correct?

A. That's correct.

Q. His no bugging order was in effect at that time, though, was it not?

A. Yes, sir.

Q. And that order wasn't repealed until March 29, 1971, was it?

A. That's correct.

Q. And it was the March 29, 1971 order, the principles in that order, that you thought you were in compliance with?

A. I felt during the time that we were participating

in this type of activity, that I was within the law in doing it.

Q. And you felt that way despite the existence of Chief Murray's no bugging order?

A. I don't believe I'd ever seen this order that you put in front of me this morning before this.

MR. SCHEMBER: I have nothing further.

THE COURT: Recross?

MS. BONN: No, Your Honor.

MR. WHITE: No, Your Honor.

THE COURT: You may step down, sir.

(Witness excused.)

THE COURT: Next witness?

MR. SCHEMBER: Your Honor, Plaintiffs call Jack Acree.

Whereupon,

JACK ACREE

was called as a witness on behalf of the Plaintiffs and, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHEMBER:

Q. Mr. Acree, my name is Dan Schember. I am one of the attorneys for the Plaintiffs in this case.

Would you state your full name and current address for the record.

A. Jack L. Acree, 9702 Dorval Avenue, Upper Marlboro.

Q. And are you a Defendant in this case?

A. Yes.

Q. Were you at one time affiliated with the Metropolitan Police Department?

A. Yes.

Q. And did you at one time serve in the intelligence division?

A. Yes.

Q. During what time did you serve in the intelligence division?

A. I think it was from '66 to '72.

Q. Was there a particular subunit of the division that you served in?

A. Security information.

Q. Throughout the entire period?

A. Yes.

Q. When you first came to the security information section, who was your supervisor?

A. Inspector Herlihy.

Q. And what was your rank at that time?

A. Sergeant.

Q. Was there a lieutenant in the division?

A. No, sir.

Q. Did there come a time when a lieutenant was assigned

to the division?

A. Yes.

Q. Do you recall when that was?

A. No.

Q. Do you know who it was?

A. George Suter.

Q. Mr. Acree, during the course of your work in the intelligence division, security information section, did you have occasion to utilize the techniques of electronic surveillance to gather information?

A. Yes, sir.

Q. Did you gather such information concerning antiwar groups?

A. Yes.

Q. Did you gather such information concerning the Washington Mobilization Committee?

A. Yes, I think it's one of the antiwar groups.

Q. Did you gather such information on the People's Coalition for Peace and Justice?

A. I don't totally recall that organization, but I think they were involved all together as antiwar.

Q. Do you recall electronic surveillance by the Metropolitan Police Department of that organization?

A. Not particularly, no.

Q. Do you recall the number of locations throughout

the city where electronic surveillance of antiwar organizations occurred during the time period that you were in the intelligence division?

A. Not really. I would say three, maybe four, but I'm not certain of the number.

Q. And were those premises -- what was the kind of premises that were monitored electronically?

A. You mean buildings? Is that what you're talking about?

Q. Yes.

A. What type of buildings?

Q. Yes.

A. Apartments and residences of informants.

Q. These were informants within the antiwar organizations?

A. Informants of the Metropolitan Police Department.

Q. Were these informants that had infiltrated antiwar organizations?

A. I think so. I think they had infiltrated, yes.

Q. And was part of their job of infiltrating antiwar organizations to profess sympathy with the aims and goals of those organizations?

A. The purpose we had them there was to gather information to protect the citizens of the District. What other aims, I don't know.

Q. Did the informants, to your knowledge, inform the organizations that they were police officers or police informants?

A. I wouldn't think they would.

Q. You would think they would?

A. Wouldn't. I wouldn't think they would do it.

Q. Did you ever give special informants or undercover officers instructions on how to infiltrate a group?

A. Yes. I think we told them what we wanted to know.

Q. Did you instruct them to work their way into positions of responsibility within the organizations that they infiltrated?

A. We instructed them to work their way in so they'd be in the confidence of the individual, but not to make any policy.

Q. Did you instruct them how to obtain the confidence of the members of the organization?

A. Not -- not to sit down and instruct them, no. Just general information to associate with them, but not specific instructions that you maybe want.

Q. To associate with them for the purposes of the organization?

A. That's right.

Q. And these are the informants who consented to

relating to dissemination of false information or anonymous leaflets?

A. There were some false leaflets, but I'm not sure the FBI was involved in them.

MR. SCHEMBER: Page 74, counsel.

BY MR. SCHEMBER:

Q. Do you recall at the internal affairs division investigation deposition making the following statement: "The Bureau had a very good source. They had people in all these places. They had a number of undercover Bureau agents out there, plus they played their little tricks, and set up these false places, and put out the false literature, did all that little garbage."

Do you recall testifying in that manner?

A. That was me surmising. I don't have any facts that they did it.

Q. You worked pretty closely with the FBI back then, did you?

A. No, I wasn't that close with the FBI.

Q. Several of your subordinates were, weren't they?

A. Yes.

Q. Which of your subordinates worked most closely with the FBI?

A. I think anyone underneath me, if their particular organization that they were assigned to would work with

them. I don't know the individuals.

Q. Was Sergeant Scrapper one of the persons who worked closely with the FBI?

A. He could have, yes.

Q. Did he work closely with special agent Joseph Mahoney?

A. I would say yes. He did temporarily. I don't know how long he did.

Q. And it was through that close association that you learned about the Bureau's little tricks, the false literature?

A. I didn't learn it from Sergeant Scrapper.

Q. Mr. Acree, did the Metropolitan Police Department intelligence division conduct surveillance of any form through informants, undercover officers, electronic surveillance, or other means of an organization known as the Emergency Committee on the Transportation Crisis?

A. Not that I recall, no.

Q. Not that you recall?

Was information maintained on the Washington Mobilization Committee?

A. Was information retained?

Q. Maintained by the intelligence division.

A. Yes, we kept files.

Q. Did you keep a file on the Washington Mobilization

Committee?

A. Yes.

Q. The New Mobilization Committee?

A. Yes.

Q. The Institute for Policy Studies?

A. Yes.

Q. Arthur Waskow?

A. I don't know whether there were separate individuals, but he was associated with the Institute for Policy Studies.

Q. Did you have a file on the Black United Front?

A. Yes.

Q. On David Eaton?

A. I don't recall Eaton, but, again, it could have been.

Q. Reginald Booker?

A. Possibly, yes. I don't recall his name.

Q. Did you have a file on Julius Hobson?

A. The files would be available to you. If they were there, they are still there.

Q. Do you know if the files are still available, Mr. Acree?

A. As far as I know, they are.

Q. Did you have a file on Julius Hobson?

A. Yes, I think so.

Q. Did you have a file on Tina Hobson?

A. I don't know. I don't think so.

Q. Did you have a file on the Washington Peace Center?

A. I don't recall that. Possibly, yes.

Q. Was an undercover officer assigned to gather information on the Peace Center?

A. I don't recall. It could have -- if we had a file, one would have been assigned.

Q. Did you have a file on the Women's Strike For Peace?

A. Yes.

Q. These were all organizations and individuals that the intelligence division had an interest in?

A. Yes.

Q. And what was your interest in these organizations?

A. More or less to gather information that possibly would be happening in the District of Columbia.

Q. Happenings of what kind?

A. Any activities which would affect the citizens of the District or would require any type of police action.

Q. Did you use undercover informants and undercover officers and informants in conducting these investigations?

A. Yes.

Q. Did you ever receive any information that any of these organizations that I've just mentioned were

the period you were there?

A. Yes, ma'am.

Q. Now, have you been present in court all day today?

A. No, ma'am.

Q. Can you just describe what in your understanding as the director of that division the functions were for the security information section.

A. Well, basically the functions were to keep the Chief of Police and the operating officers supplied with enough information or information that they could properly deploy the resources of the Department.

Q. In respect to what activities?

A. Well, in respect to activities such as demonstrations, disorders, and things of that nature -- riots.

Q. Did the security information section concern itself with criminal investigations?

A. Basically, no, ma'am.

Q. So it was basically non-criminal information?

A. That's right.

THE COURT: You don't have to repeat that.

BY MS. PILSBURY:

Q. Did you provide your subordinates within the security information section with any written or oral guidelines as to what sort of information you wished them

to gather?

A. I'm sure they had certain oral guidelines, but I don't believe there were any written guidelines.

Q. From whom would they have oral guidelines?

A. From myself, I presume, or from their immediate superiors, who were sergeants and lieutenants, who were dealing with lower ranking people.

Q Would these be guidelines of a general nature or were these guidelines given on an as-needed,case-by-case basis?

A. Well, I think as it's needed, really.

Q. Would you provide them with guidance, then, only if they asked?

A. I think if somebody were assigned to the unit, that some official would tell them what they were doing, what was expected of them, and --

THE COURT: Is the witness testifying from knowledge or speculation? You say they would? Did --

THE WITNESS: Well, there was no set hard and fast procedure, Your Honor. Somebody would take under their wing a small element, and it would be broken in, as it were.

BY MS. PILSBURY:

Q. So the new people in the division would learn what to do by example?

A. Well, by direction, example, yes.

Q. What I'm trying to find out, Inspector, is how would a person working in the security information section know what to gather information about?

A. Well, they would be given an assignment or whatever would be targeted. If there was some announcement, press release, or something else saying that such a group is planning on something, then somebody would be assigned to gather what was available on it so that we could coordinate reports up the line.

Q. Would it be correct to say that an individual officer would be told to go get information on a particular person or group?

A. Yes.

Q. Would the officer ever make the determination for him or herself as to which groups to gather information on?

A. Well, they might be in a situation where information is available to them for other groups, and they would report it back. It wasn't a compartmentalized kind of situation because there were so many groups and organizations around that time, that it was hard to separate them. I can't do it.

Q. Did your division attempt to gather information on every group that was engaged in any sort of activities

in the nation's capital or were there particular categories of groups that you confined yourself to?

A. Well, it would be groups that would cause the Police Department to take some or react to whatever they were doing. Just because we were dealing with them didn't imply any negative situations as far as they were concerned. In other words, you could have religious groups or other types of groups that would be in here, and we would have to find out whether it was -- how many are coming, whether it would be a problem, and where they were coming from, and things of that nature.

Q. Were you interested only in groups that were planning major public events like parades and demonstrations?

A. Not necessarily, no.

Q. Were there any types of groups that you weren't interested in?

A. I'm sure there were. I just can't say what we weren't interested in.

Q. Would it be correct to say that you attempted to gather information on any group that was going to be active in Washington, D. C. in opposition to the war in Vietnam?

A. Yes, ma'am.

Q. Would it also be correct to say that your interest was not confined to antiwar groups, but that you also gathered

of people who were engaged in political activities?

A. They made films of demonstrators and demonstrations.

Q. And would they ever attempt -- excuse me -- ever attempt to interview demonstrators posing as representatives of news media?

A. They have.

Q. And what would be the purpose of doing that?

A. Well, frequently these people weren't anxious to talk to the police, but they would talk to the press.

Q. What would you be attempting to find out by interviewing them through a presumed news interview that you couldn't find out by simply attending the public demonstrations?

A. Well, it would be too late after the demonstration is under way to know what manpower would be needed by the police to deal with them, if they had to do it at all.

Q. When would these pretend interviews take place? Would they take place prior to a demonstration?

A. They were on rare occasions but they have taken place at, you know -- I don't know -- at press conferences and things of that nature.

Q. So they would take place at occasions where the group you were interested in was making a public statement, anyway?

A. Right.

Q. Is that true?

A. Yes.

Q. And in those instances, the Metropolitan Police Department would not identify themselves as such, but would pretend to be members of the press?

A. Well, on the few occasions that I'm aware that it happened, that's the situation.

Q. Do you recall which occasions it happened on?

A. No, but it's very few occasions. I think later on Chief Wilson told them to stop doing it.

Q. Do you recall which groups you used this technique in reference to?

A. No, ma'am.

Q. If a group was planning a major demonstration in Washington, D. C., do you know to whom they would apply for a permit?

A. I'm not sure. It depends on where they're going and a lot of that stuff has been changed from year to year. It could apply to the Interior Department, the Police Department.

Q. Did they apply to you?

A. No. Permits were just forwarded to the intelligence division, as I recall, as a matter of information that had already --

THE COURT: The question was whether they applied

that is included in the term electronic surveillance?

A. I can't recall.

Q. Now, I believe you've indicated that your Department worked with the FBI. Could you describe what the nature of that relationship was?

A. We exchanged information on, I guess you might say, a daily basis. The agents would come by our office daily, I would say, while I was there. Frequently our people went to the Washington Field Office.

Q. Was there an interchange of information at the working agent level?

A. Yes, ma'am.

Q. In other words, the case officers?

A. Yes, ma'am.

Q. When an FBI agent wanted information about a particular group that your people might have information on, could that FBI agent obtain it directly from the policeman?

A. Usually, yes, ma'am.

Q. Do you know whether or not you knew the identity of the informants that the FBI had inside groups?

A. I didn't, no, ma'am.

Q. Do you know whether or not the FBI knew the identity of the informants you had inside groups?

A. I didn't know. I think with one exception that

into positions of authority or responsibility within the groups that they infiltrated?

A. I think they were instructed to get in an area where they could find as much information as possible, and not be involved in promoting anything.

Q. And not be involved -- I'm sorry?

A. In promoting or suggesting any activity because that was beyond what they should be doing.

Q. Do you know for a fact that they were ever instructed not to promote or suggest any activities?

A. I don't know for a fact that all of them were, no, ma'am.

Q. Are you familiar at all with the activities of Harold Bynum, an informant in ECTC?

A. No, ma'am.

Q. Ann Kolego? Does that name sound familiar to you?

A. That sounds familiar. I think I've heard the name, yes, ma'am.

Q. Do you have any personal knowledge of what her assignment was or her duties were?

A. She was an informant. I've never met her at all.

Q. Did you have any personal contact with any of the people who were serving as informants?

A. As far as I know, I've only met one.

Q. Now, when you would obtain information, would it be filed by individual name or by group or by some other designation?

A. Well, it's usually just filed alphabetically.

Q. By what?

A. By name or group.

Q. And were individual files maintained?

A. Individual files were maintained, yes, ma'am.

Q. When you left the Department in May of 1973, were these files still in existence?

A. In December of '72, the last day I worked, they were. I don't know what happened from then on out.

Q. Do you know whether or not they're still in existence?

A. No, ma'am. I don't know.

Q. Where were they when you last saw them?

A. In the intelligence division office on the 5th floor.

Q. Is that in the Municipal Building?

A. Yes, ma'am.

Q. Whose office would that be?

A. Now?

Q. No, then.

A. The intelligence division.

Q. Did you all work in one big room?

A. Well, it's several. It's a small area compartmentalized -- one big room divided into smaller offices.

Q. Where, specifically, in the one big room were these files?

A. They were in the -- I guess you could say the southern end.

Q. Were they in file cabinets?

A. Some of them were. I'm not sure if all of them were.

Q. Can you estimate how many files were there?

A. No, ma'am.

Q. Were these the files that were currently active?

A. Well, there was no such thing as active or inactive. They were all together.

Q. If you had film footage of a demonstration or an individual that you were interested in, would that be kept in those same file cabinets or that same area of the room?

A. I don't know.

Q. What about notes or transcripts obtained through electronic surveillance? Where would that information be kept?

A. I don't know. It would be in that office.

Q. Did you ever see notes or transcripts obtained

through electronic surveillance?

A. No, ma'am.

Q. Do you know what happened to the information gathered through electronic surveillance?

A. I imagine it was compiled into reports that we made to the Chief of Police or the staff meetings with the information taken out of it.

Q. Would these reports go across your desk?

A. Yes. We made a report every week. I'm not saying this is electronic surveillance, but reports of what activity is projected, say, for the next week so the Department -- it could be disseminated through the Department -- what's planned.

Q. What were those reports called?

A. Intelligence reports.

Q. Do you know if they were disseminated outside the Department?

A. I don't know that, no, ma'am.

Q. And these intelligence reports might include material gathered through electronic surveillance, is that correct?

A. It could. Not material -- information about different things, but it wouldn't be identified as such.

Q. As far as you know, when you retired in 1973, had any files or films or notes of any sort relating to

domestic intelligence been destroyed or shredded?

A. They shredded a lot of surplus material from time to time. They shredded a lot of material daily.

Q. How would you decide what to shred?

A. The officers handling that would decide if something wasn't needed; they would dispose of it. Rather than throw it in the trash, we shredded it.

Q. Do you know of any -- other than this routine daily shredding, was there any other massive program of destruction of documents at the time you left the Department?

A. No, ma'am.

Q. Does the Department have regulations governing how long documents should be kept and when they should be destroyed?

A. They have regulations, but I think they deal with numbered orders and reports, none of which apply to the intelligence division.

Q. Thank you.

MS. PILSBURY: Could I have just a minute, Your Honor?

Okay, that's all I have on direct, Your Honor.

THE COURT: Cross-examination?

CROSS EXAMINATION

BY MR. WHITE:

had occurred.

Q. Can you tell us in your own words what you concluded had occurred?

A. That at least an entry had been made into 1029 Vermont Avenue, that an entry had been made into inner office space within 1029 Vermont Avenue, and that property had been removed from that location.

Q. Did you determine who entered the building and removed the property?

A. Yes, we did.

Q. Who was that?

A. His name was Marcum. He was an officer at the time assigned to the intelligence division.

Q. Do you recall his first name?

A. No, I do not. I know that he was called Mike, but I'm not sure that's his first name.

Q. Chief, would you take a look at the incident summary that you've placed face down and find -- incident summary E -- I believe they are in alphabetical order.

A. I have it.

Q. Does any portion of that document refresh your recollection as to Officer Marcum's name?

A. Charles J. Marcum. He went at that time by the name of Mike, while he was assigned undercover.

Q. Did you determine how he came to go by the name

Mike?

A. That was an undercover name that either he had assumed or had been given to him, I'm not sure which.

Q. Did you reach a conclusion as to how Mike Marcum entered the building and the inner office at 1029 Vermont Avenue?

THE COURT: What do you mean by how?

BY MR. SCHEMBER:

Q. By what means of access?

A. Yes. We reached the conclusion that it was by duplicate key.

Q. Did you determine how he obtained the key?

A. It's my recollection that the key to the building itself, 1029, was a key that he had access to by virtue of either his working there part time or being known within and having access to the building. I also recall that it was the testimony of Marcum or the statement of Marcum that he received a key to the inner office space from a control officer official in the intelligence division.

Q. And who was that control officer or official?

A. I believe it was Jack Acree, who was a lieutenant at that time. I could be wrong on that. There was one or two or three mentioned that had knowledge, but it's my recollection that he attributed the key to the inner office to Acree.

Q. You're uncertain about that?

A. A little bit, yes.

Q. Would you take a look at incident summary E there and see if there's anything in your report which refreshes your recollection in that regard.

Could I direct your attention to the handwritten page number in the lower right-hand corner, No. 24.

A. I am there now.

Q. Does the second full paragraph there refresh your recollection as to the source of the key?

A. That's affirmative. He attributed it to at that time Lieutenant Suter, and I believe he was with a sergeant named Robinson, also, both assigned to the intelligence division.

Q. What was Mike Marcum's position with the Police Department at that time?

A. He was in an undercover capacity at that time.

Q. Was he an officer of the Police Department?

A. That's correct.

Q. What groups was Mr. Marcum assigned to investigate at the time that this incident occurred?

A. It's my recollection he was assigned to more than one group. I can't recall at the moment if he had specific responsibility for a group.

Q. Could I direct your attention to the handwritten

page 20 of incident summary E. Does the paragraph there refresh your recollection as to what you found Mike Marcum's assignment to have been at the time?

MR. WHITE: Your Honor, we're having a little trouble following the examination because of the lack of numbers on this document, and I would like to confer with counsel for a moment.

THE COURT: Very well.

THE WITNESS: Yes, that refreshes my recollection.

BY MR. SCHEMBER:

Q. And what were the groups that Mike Marcum was assigned to investigate?

A. Again, I'm not sure he had specific responsibility for only one group, but one of the groups he was assigned to was Students for a Democratic Society, SDS.

Q. And what was another group?

A. The New Mobilization Committee to End the War in Vietnam.

Q. During your investigation, did you determine whether either of those groups had an office at 1029 Vermont?

A. The latter, the New Mobilization Committee to End the War in Vietnam, occupied office space at 1029 Vermont.

Q. Did you determine how Officer Marcum entered the inner office? I'm not quite certain whether I asked

you that question.

A Yes. It was by a duplicate key, as I recall.

Q. There were two keys?

A. That's affirmative. One that would have gone to the building itself, and the second to the inner office space.

Q. And it was that second key that you determined had been provided by Lieutenant Suter or Sergeant Robinson?

A. That's affirmative.

MR. WHITE: Your Honor, I would object to this as being hearsay. He is recalling the statement by Officer Marcum. That's the sole basis of his knowledge.

THE COURT: That's overruled.

BY MR. SCHEMBER:

Q. What did Mike Marcum do inside the office?

A. He related that he had entered a desk previously described to him, and removed a box -- I was going to say a metal box -- from one of the drawers of the desk.

Q. Was the desk locked?

A. Yes, I'm sure it was.

Q. How did he get in the desk?

A. Again, I'd have to refresh my recollection if it's contained in -- I don't have any specific recollection, but it seems to me that he pried open the drawer.

Q. And what did he do with the box after he obtained it?

A. Well -- or shortly after obtaining the box, it's my recollection that he heard someone coming, and he threw the box out the window.

Q. Why did he throw the box out the window?

A. In fear of being caught with the box, I would assume -- or that was his statement to us.

Q. That was what?

A. That was his statement to us, that he heard someone coming, and the fear of being caught, and he threw the box out the window.

Q. And was the box subsequently recovered?

A. Not that I'm aware of. Again, I have to say that Marcum said he had some involvement in recovering the box later, going down the stairway in that the box was recovered, by his statement.

Q. Did you receive testimony from any other witnesses concerning the fate of the box?

A. My recollection is that the box itself -- we were never able to corroborate that it was, in fact, recovered.

Q. Were the contents of the box recovered?

A. There were a lot of statements made as to what may or may not have been in the box by a number of people. Or it was attributed to some material having come from the box.

Q. Did any of those -- did you make a determination -- or, rather, let me ask you this. Did you receive testimony that was mutually corroborating as to what the contents of the box were?

A. I'm not sure I understand the question.

Q. Did more than one witness in your investigation say that the contents -- testify consistently as to the contents of the box?

A. I believe there was more than one who stated they thought it contained stock certificates or something to that effect. Stock certificates was the most often mentioned by people that we talked to in reference to what the contents of the box may have been.

Q. These were stocks of what company?

A. I can't recall.

Q. Could I direct your attention to page 23 of incident summary E. Does the first full paragraph refresh your recollection as to the company whose stocks were obtained?

A. It says their information was it was stocks of the Singer Corporation.

Q. Did you determine who the box and the stock certificates belonged to?

A. I believe I just saw their names on this same page, page 23. It was alleged that it was sometimes

used by a Rene Davis, Dave Hawk, and Sam Brown is also listed.

Q. And did you determine whether those individuals were affiliated with an organization having offices at 1029 Vermont?

A. No, I don't believe I did.

Q. Did you investigate to determine which groups had offices in 1029 Vermont?

A. I believe we -- I believe I'm correct in saying that the Federal Bureau of Investigation files that we were later able to obtain indicated some groups, including those that at one time had either office space or access to office space at that address.

Q. Do you recall the names of the organizations now?

A. No, I do not, but there were probably four to a half a dozen or even more.

Q. Would you look, please, at page 21 of incident summary E.

A. I have it.

Q. Does page 21 and 22 refresh your recollection as to the groups that had offices there?

A. Yes, sir.

Q. Directing your attention to the bottom of page 21 and the top of page 22, does that refresh your recollection

as to the organization with which Sam Brown and David Hawk were affiliated?

A. Yes, sir, it does.

Q. And what organization was that?

A. The Vietnam Moratorium Committee.

Q. Chief Winkleman, I've just placed before you Plaintiffs' Exhibit No. 71 in evidence. During the course of your investigation, did you have occasion to examine that document?

A. May I take a moment to look at it?

Q. Please.

A. I have no specific recollection of ever having seen that document before.

Q. Chief, would you look at page 29 of the handwritten numbered pages on incident summary E.

A. I have it.

Q. Now, directing your attention to the third full paragraph on that page -- and would you also look at page 3, the final paragraph of Exhibit 71 simultaneously.

A. Okay.

Q. Now, does page 29 of incident summary E refresh your recollection as to whether you've ever seen Plaintiffs' Exhibit 71?

A. I recollect seeing the last page that you just pointed out to me, yes.

Q. You're referring only to page 29?

A. Negative. I'm referring to what is labeled -- I don't see a label on it, but it's the last page of Plaintiffs' Exhibit 71.

Q. Are you referring to the last page or the second to last page?

THE COURT: He said the last page.

THE WITNESS: This is the last page in this one -- page 4.

BY MR. SCHEMBER:

Q. Do you recall seeing page 4 of Plaintiffs' Exhibit 71?

A. Yes. That's correct.

Q. Do you recall seeing any other pages of that document?

A. In a review of it, I do not, but I recall page 4 or what's labeled here as page 4 only because it was somewhat corroborative in that portion of the investigation.

Q. What portion of it was corroborative?

A. May I read it for the record?

Q. Yes.

A. It says, "Administrator or representative is Detective Sergeant Edward Spiker, intelligence division, Metropolitan Police Department, W. D. C. Local dissemination of Teletype to AUSA, Secret Service, and military intelligence

agency, U. S. Park Police, and General Services Administration, protection force are cognizant."

Q. What about this page corroborated facts you learned in your investigation?

A. It's afforded to me as an investigator that when Spiker indicated on page 29 of the report we are looking at --

MR. WHITE: Your Honor, I beg your pardon again. However, the witness is now reading a portion of page 29 which, in fact, is drawn from Document 71, the statement. We might want to do this at the bench, Your Honor.

(At the bench.)

MR. WHITE: Your Honor, page 29, it begins up here and states what was contained in the files of the FBI. It appears to me that the information contained in the file following after the colon is, in fact, the information that they obtained from 71. So it's not corroborative. It's just recounting what is in this memo.

MR. SCHEMBER: Your Honor, he has testified that at least he recalls during the course of his investigation page 4 of this document -- seeing that. I am asking him what about page 4.

THE COURT: What is the point?

MR. SCHEMBER: Well, Your Honor, --

THE COURT: What are you proving?

MR. SCHEMBER: That this document was seen by him in the course of his investigation.

MR. WHITE: I will stipulate to that.

THE COURT: Very well.

(Before the jury.)

MR. SCHEMBER: Mr. White, would you care to state the stipulation agreed to, so I don't do it and misstate it?

MR. WHITE: Maybe I should confer with Ms. Bonn before I enter into this stipulation.

The stipulation is that Plaintiffs' Exhibit 71 in evidence, which is a memorandum -- I beg your pardon -- a Teletype to the Director of the FBI from the special agent in charge of the Washington Field Office, the contents of which have been testified about previously, was a document which Chief Winkleman saw during the course of his investigation that he is now describing.

BY MR. SCHEMBER:

Q. Chief, was examination of FBI files part of your investigation into this incident?

A. The FBI provided certain documents that did become part of the investigative information, I would say. Personally, I did not review any files of the Federal Bureau of Investigation.

Q. Sir, could you keep your voice up.

A. I personally did not review any files of the Federal Bureau of Investigation.

Q. Did you determine whether the FBI knew at any time that the Vietnam Moratorium Committee had Singer stock?

A. I wonder if you'd repeat the question, please.

Q. Did you determine in your investigation whether the FBI knew that the Vietnam Moratorium Committee had Singer stock?

A. No, I did not.

Q. Did you determine during the course of your investigation whether an officer of the Metropolitan Police Department had informed the FBI that the Vietnam Moratorium Committee was holding Singer stock?

A. Such an indication was given, yes. I didn't make a conclusion that they were or substantiate that they were.

Q. Did you work jointly with a representative of the FBI in the United States Attorney's office in preparing the findings of your investigation?

A. Again, I wouldn't label them findings, but --

Q. The conclusions and determinations that you made?

A. Yes.

Q. Did each one of you know all of the facts constituting your determinations and conclusions or did

different members of the investigative team contribute different facts to the determinations that you made?

A. I think we arrived at the determinations jointly, although we had differing responsibilities, if you will, or responsible to different masters.

Q. Chief, would you look again at page 29 of incident summary E and the last paragraph on page 3 of Plaintiffs' Exhibit 71. Now, comparing the contents of the third paragraph on page 29 with the last paragraph on page 3 of 71, do those paragraphs refer to the same thing?

A. You're saying the last paragraph on 29?

Q. The third paragraph on 29 compared to the last paragraph on Exhibit 71, page 3.

A. Yes, I would say they're indicative of the same thing.

Q. What is the subject matter of those portions of those two documents?

MR. WHITE: Your Honor, just for clarification, I was hoping we could do this with the stipulation, and I think we failed. What I intended to stipulate to was this third paragraph was drawn from this memorandum, not that they are corroborating or self-corroborating.

THE COURT: That's been established.

BY MR. SCHEMBER:

Q. What is the subject matter of the paragraph?

THE COURT: There's no need to pursue that. You don't need to do that again. You've already done it.

BY MR. SCHEMBER:

Q. Chief, does the third paragraph on page 29 of the incident summary refresh your recollection as to whether an office of the MPD informed the FBI that the Vietnam Moratorium Committee was holding Singer stock?

A. That's what that would indicate, yes.

Q. Did you reach a determination or a conclusion whether the metal box or its contents ever found their way to the intelligence division offices?

A. It was my belief that they did, yes.

Q. Did you make a determination or conclusion as to what happened to the box or its contents?

A. No, I did not.

Q. Did you determine which officers within the intelligence division knew about the presence of the box in the intelligence division office?

A. Not that I can recall, no.

Q. Did you receive statements from witnesses indicating their knowledge of the presence of the box in the office?

A. The box itself? Not that I can recall.

Q. Did you receive statements from Metropolitan

Police Department officers or former officers indicating their knowledge of the presence of the contents of the box in the office?

A. We received a number of statements from individuals in that category that wouldn't say that they had knowledge of stock certificates, this type of thing. They would describe it, and attributed it to that entry into 1029 Vermont as opposed to coming from a specific box.

Q. Did you determine whether this type of incident, the obtaining of a box and documents in this manner, was a usual or unusual event in the routines of the intelligence division?

A. It was an unusual event.

Q. During the course of your investigation, I believe you also said that you investigated allegations of improper one-party consent monitorings, is that correct?

A. That's correct.

Q. Was that a reference to electronic surveillance?

A. Would you define what you say is electronic surveillance?

Q. Does the term electronic surveillance have any meaning to you?

A. Yes, it does. It has several.

Q. Would you explain what you mean by electronic surveillance.

A. Well, in this incident that we investigated, it concerned itself primarily with microphones installed in a location and being listened to from another location under a one-party consent type monitoring.

Q. In preparing your findings concerning any incidents of this, did you use the term electronic surveillance?

A. I'm sure we did.

Q. Did you find that any instances of electronic surveillance by the Metropolitan Police Department had occurred?

A. Yes, we did.

Q. Do you recall how many instances you found had occurred?

A. I would say approximately a dozen that we addressed.

Q. And who were the targets of this electronic surveillance?

A. I could not name the specific individuals or specific organizations. Of course, that would help.

Q. Did the organizations have anything in common so that you could characterize them as a whole?

A. Yes. As a generalization, I would say they were groups involved with anti-Vietnam War activities or organizing an effort for the government to do something

about the war in Vietnam, that type of activity.

Q. Chief, would you look at incident summary B.

A. I have it.

Q. Does incident summary B describe an incidence of electronic surveillance that you found had occurred?

A. Yes, it does.

Q. Do you recall at this time who the targets of that surveillance were?

A. I would have to refresh my recollection.

Q. Would you turn to page 10 of that summary and look at the first full paragraph on that page. Does that refresh your recollection?

A. Yes. It indicates at least three different organizations on that page.

Q. And what is the first organization indicated?

A. Washington Mobilization Committee.

Q. What were the steps taken by the Metropolitan Police Department in setting up the surveillance that is reported in this incident summary?

A. Are you talking about administrative, technical entirely or --

Q. What, step by step, did the Metropolitan Police Department intelligence division do to set up the electronic surveillance that's recounted in this incident?

A. We would --

MS. BONN: I would object on the grounds that it's cumulative and I'm not sure a proper foundation has been laid.

THE COURT: Foundation? That's sort of inconsistent.

MS. BONN: It's cumulative in the first instance.

THE COURT: I beg your pardon?

MS. BONN: It's cumulative.

THE COURT: The objection is overruled.

THE WITNESS: Generally, I guess, as in all incidents that I was aware of, information was received from an informant that a series of events or one event was going to take place. The Police Department paid these informants or they were paid informants by the Department -- would rent properties in which the informant was to reside, then install transmitters, electronic transmitters, establish a listening post, and be guided by the informant as to when anything significant was going to occur, such as a meeting in which plans may be discussed, etcetera. And in almost all of the instances, that is when they manned the monitoring post, if you will. Sometimes they monitored 24 hours a day, and I believe in this particular instance, they did -- the one that we are referring to now.

BY MR. SCHEMBER:

Q. And during what time period was that with respect to this incident?

A. I just read I believe it was late '68 to early '69.

Q. And was there a person who had consented to this electronic surveillance?

A. That's affirmative.

Q. And who was that?

MS. BONN: Objection.

BY MR. SCHEMBER:

Q. Not the name of the person. Can you tell me --

A. It was a paid informant for the Police Department.

Q. Was it the informant who occupied the apartment or the premises?

A. Yes.

Q. Did you determine whether the informant had been present and a party to all conversations that were overheard?

A. It's my recollection on that particular one that person was not present, or at least it was not -- let me rephrase that to say our intelligence division was not able to establish a procedure which they could identify to us whereby they could determine whether or not that person was present at all times when conversation was listened to.

Q. Were your findings with respect to the dozen

other incidences of electronic surveillance similar to your finding with respect to this incident?

A. That's right.

Q. That they concerned antiwar organizations?

A. Yes.

Q. That is was a one-party consent monitoring?

A. That's affirmative.

Q. But that inadequate procedures were used --

THE COURT: That's not what he said about inadequate procedures. That's your statement, not his.

BY MR. SCHEMBER:

Q. Did you determine with respect to those other incidents whether the informant was or was not present at all times during the monitoring?

A. Can I ask you to repeat it once more?

Q. With respect to the other incidents, did you determine whether the informant had been present at all times during the monitoring?

A. In each case and without having to go over each of them individually, we found that both occurred. For instance, if you have a short monitoring situation, in which you're going to have an hour meeting, certainly that was true. However, we also found that in at least several incidents where the Department had control of the property and was paying the person who occupied the property,

that we concluded that that party was not always present when the monitoring post was manned.

Does that answer your question?

THE COURT: Excuse me, Mr. Schember.

Ladies, and gentlemen, you probably detected from my question or my remark, but you're to draw no conclusion at this time as to whether what the witness describes as the procedure is a proper or improper procedure. All you've heard is what the procedure was.

MR. SCHEMBER: Thank you, Your Honor.

BY MR. SCHEMBER:

Q. During the course of your investigation, did you determine which officials in the intelligence division were responsible for conceiving and carrying out these instances of electronic surveillance?

A. It would have been more than one.

Q. And who were they?

A. During that period of time the director, I believe, was Inspector Thomas Herlihy. Subordinate to he were Lieutenants Jack Acree and George Suter. There may have been another lieutenant detailed there for a short while that I recall involving -- one of them was a lieutenant named Harold Crook. Generally, those would have been the officials responsible.

Q. Do you recall whether Mr. Suter, Lieutenant

answer your question?

Q. You testified that you interviewed at least 20 witnesses, perhaps more in the course of this investigation, is that correct?

A. At least that many.

Q. With regard to those witnesses, were you able to make a judgment as to their reliability in a general sense?

A. Generally, I believed them all to be reliable people.

Q. Were there exceptions?

A. I would say that I thought some were more reliable than others.

Q. If I could focus on Charles Marcum, did you have an impression as to his reliability and trustworthiness?

A. Yes, I did.

Q. And what was that?

A. I felt he had a tendency to overstate both his own involvement and his importance in the scheme of things.

Q. Were there occasions when you found that certain of his statements were not corroborated or there was a lack of any other supporting evidence to support his statements?

A. I would have to phrase it this way: I found a considerable amount of information that he provided to be -- we were unable to corroborate.

Q. Did you investigate an Officer Spiker or Sergeant

Spiker?

A. Officer Spiker -- we received a statement from him, yes, we did.

Q. Did you have an opinion or an impression as to his reliability or trustworthiness?

A. I would almost characterize Officer Spiker in the same manner, in that I thought he had a great tendency to overstate -- to overstate his own importance or -- I don't believe I can use a better term than that in my opinion.

Q. Approximately how many incidents did you investigate?

A. Approximately 18 to 20, I believe.

Q. If you can recall, do you know how many of those incidents either Spiker or Marcum or both were involved in or gave information about?

A. As I recall, Spiker gave information as to one incident of his own involvement in a one-party consentual type monitoring, I think. I also recall that he was one of the corroborating things that led us to conclude that there was an actual entry into 1029 Vermont or there could have been.

Q. And Spiker?

A. That would be Spiker. He was one of the two or three that seemed to give some credence to an entry